



# REPORT TO COUNCIL

## City of Sacramento

# 27

915 I Street, Sacramento, CA 95814-2604  
www.CityofSacramento.org

STAFF REPORT  
**June 20, 2006**

Honorable Mayor and  
Members of the City Council

**Subject:** Recommended Actions on Federal, State and Municipal Legislation Regarding Telephone, Telecommunications, Cable and Related Services; Use of City Rights of Way (ROWs); Public Utility Easements (PUEs); and Consideration of a Standard Encroachment Permit Condition.

**Location/Council District:** Citywide

**Recommendation:**

Staff recommends that the Council take the following actions: 1) Take a position opposing the passage of AB 2987 (Nunez), in its current form, which would establish a statewide franchise system for cable providers, and authorize sending a letter of opposition; 2) Take a position opposing the passage of H.R. 5252 (Barton), in its current form, which provides a federal system for cable providers, and authorize sending a letter of opposition; and 3) Approve a resolution a) to require language to be included in encroachment and similar permits to require that a franchise or license be obtained from the Sacramento Metropolitan Cable Commission (SMCC) by AT&T for its Project Lightspeed project, and by others seeking to provide similar cable and related services in Sacramento; and b) to require that staff develop, for Council consideration, regulations to govern the placement, safety and compatibility of telephone and telecommunications equipment ("street furniture") when placed in City rights of way and public utility easements.

**Contact:** Patti Bisharat, Director of Government Affairs, 808-8197  
Jon Blank, Supervising Engineer, 808-7914

**Presenters:** Patti Bisharat, Director of Government Affairs  
Jon Blank, Supervising Engineer

**Department:** City Manager's Office and Department of Transportation

**Division:** Government Affairs and Construction

**Organization No:** 0310 and 3437



**Summary:**

This report provides information on pending state and federal legislation on telecommunications for the Council's consideration of a City position. It also provides information on proposed language to include in city issued encroachment permits relating to telecommunications as well as amendments to City code governing placement of telecommunications equipment.

**Committee/Commission Action:** None.

**Background Information:**

Under existing federal and state law, local jurisdictions have franchising authority over cable providers. In Sacramento County, the County, the City of Sacramento and the other cities in the county (other than Isleton), formed the Sacramento Metropolitan Cable Commission (SMCC), a joint powers authority, to govern franchises and licenses for providers of cable service. Each of the jurisdictions adopted an ordinance requiring cable providers who wish to provide services within the County to obtain a franchise or license from SMCC.

**I. Pending Legislation**

There are a number of pieces of legislation pending at the state and federal level that would significantly alter the regulatory scheme governing cable service providers. Two bills of particular importance are: 1) AB 2987, which was passed by the California Assembly on May 31, 2006 (77-0 vote) and is currently before the California Senate; and 2) HR 5252, which was passed by the U.S. House of Representatives on June 8, 2006 (321-101 vote) and is currently pending before the U.S. Senate. There are additional bills pending at both the state and federal levels, but at this time, these are the primary bills.

**Major Concerns with AB 2987**

AB 2987 bill would establish a procedure for a company to obtain a state-issued franchise for the provision of cable service or video service statewide. Instead of a cable or video service provider negotiating locally for a franchise agreement, the company would apply for the franchise at the state level. Current franchise holders would be eligible to apply for state-issued franchises at the expiration of their current franchise agreements with local governments.

There are four major provisions in the bill that are of concern for the City and thus the basis for the recommended oppose position on AB 2987.

Loss of Revenue From Franchise Fees. Currently the City of Sacramento receives approximately \$2 million in revenue from the franchise fee. The franchise requires that the cable companies remit a franchise fee that is equal to five percent of its gross revenues.

AB 2987 would require the same franchise fee as currently required, however, the definition of gross revenues in the bill is narrower than the definition in the Cable Commission's requirement. Thus, this narrower definition would result in less revenue to the city. In addition, the bill requires that the franchise fee revenue flow to the state and then to the City. Past experience has taught us that as local revenue flows to the state and then to the city it has resulted in less revenue to the City. In bad fiscal times, the State is likely to take this revenue.

Cherry Picking/Discrimination Issues. Currently, the Cable Commission allows the cable company to decide where it will build out, however, it requires that the build out be balanced. The commission requires the cable company build out an equal amount of households above and below median income.

AB 2987 allows the video services providers to self-define the area they will service. This means that the industry will be allowed to pick and choose the neighborhoods they will serve within a community. Thus, the competition could be limited to the areas they choose to serve. The bill does not provide a mechanism for the local community or government to protest the area which the provider chooses to provide services, or the areas it ignores. It also allows the service provider to build out in a community with a mix of services including wire, direct-to-home satellite service or another alternative technology.

While AB 2987 requires that a cable operator or video service provider may not discriminate against or deny access to service to any group of potential residential subscribers because of the income of the residents in the local area in which the group resides, there is no mechanism to enforce this requirement. Also, it is not clear how a provider would be found in a discriminatory situation when it is allowed to choose freely where it provides the services in the first place.

Installation, Construction, and Maintenance in Public Rights of Way. This bill requires local government to allow the holder of a state-issued franchise to install, construct, and maintain a network within public rights-of-way under the same terms and conditions as applicable to telephone corporations. The bill does not include language that gives locals the authority to deal with the aesthetics of terminal boxes that video service providers may want to install.

Current right of way management under local franchises contains a set of procedural rules to follow when issues arise during the deployment of communications infrastructure. Procedural rules include who is responsible when a water main is accidentally broken, who is responsible for clean up and removal of graffiti and other safety or repair issues. In its current form, this bill does not contain procedural rules.

Restriction of Public, Education, and Government Channels (PEG Channels). AB 2987 does require the service provider to provide sufficient space for PEG channels,

however, it requires the city to pay for the conversion of the PEG channels to fit the video service provider's transmission. This would result in an additional cost to the city.

Staff recommends that the Council take a position opposing AB 2987 in its current form, and authorize the Mayor to sign and send a letter indicating the City's opposition, in the form set forth in Attachment A.

### **Major Concerns with H.R. 5252**

This bill preempts state and local regulation over cable providers and instead provides for a federal franchise scheme administered by the Federal Communication Commission. The concerns described above for AB 2987 are substantially similar to the concerns staff has for H.R. 5252.

Objections of local government to this federal legislation include the following:

- replaces the local franchise with a federal franchise;
- allows cable companies to pick and choose who to serve;
- severely limits municipal authority to enforce local laws pertaining to rights of way and makes the Federal Communication Commission the right of way enforcement agency;
- reduces the franchise fees local communities receive (by excluding significant items from the revenue base on which fees are computed);
- restricts or eliminates local government, school or public channels (PEG channels), funding for PEG channels, institutional networks and the ability of municipalities to use cable systems for local emergency alerts;
- allows incumbent cable providers to reject their current cable franchises and utilize the new regulatory scheme as soon as phone companies enter the cable business.

### **II. AT&T Project Lightspeed Issues**

AT&T has recently approached the City to obtain permits to locate new telecommunications facilities (street furniture) in the City. The facilities will improve AT&T's ability to provide telecommunication services; the facilities will also allow AT&T to provide new services under its "Project Lightspeed" project. Pursuant to state law (Public Utilities Code Sec. 7901) AT&T has the right to use the public rights of way and public utility easements, subject to appropriate regulations.

There is a dispute as to whether the services proposed to be furnished under "Project Lightspeed" constitute services that require a cable provider license issued by the

SMCC. SMCC has taken the position that the services that AT&T will be providing pursuant to Project Lightspeed constitute cable service as that term is defined in the cable ordinance and that a license is therefore required, and has recommended language to be included in any permits, including right of way encroachment permits, that confirms the necessity for obtaining a SMCC cable provider license. A copy of the draft language is attached as Attachment A.

Staff met with representatives from AT&T concerning the placement of equipment within the City right of way and public utility easements, and discussed Project Lightspeed. AT&T representatives indicated that while they did not believe a cable license was needed for Project Lightspeed, and that AT&T was not interested in obtaining one, AT&T was amenable to entering into an agreement, albeit of a much shorter duration than the cable license, that would provide some of the same benefits as a cable license, such as a franchise fee and PEG support. AT&T does not intend to comply with the universal service requirement applicable to cable service providers.

The issue of whether the services to be provided under "Project Lightspeed" require a cable franchise or license has been raised in a number of jurisdictions. The City of Walnut Creek is currently involved in litigation with AT&T over Walnut Creek's assertion that a cable franchise or license was required to provide such services. Walnut Creek was sued after including language in an encroachment permit issued to AT&T for "street furniture" that a cable franchise or license was required before AT&T could commence providing Project Lightspeed services. The litigation is currently pending in state and federal courts.

Staff recommends that the draft language recommended by SMCC be included in City issued encroachment permits. Adoption of the attached resolution directs staff to include this language, as well as direct staff to prepare certain regulations, as discussed below.

### **III. City Right-of-Way Regulations**

The City Code provisions governing providers of cable service, set forth in Article V of Chapter 5.28 (Sections 5.28.900-5.28.1250) and the "above ground pedestal" regulations adopted by SMCC (SMCC Resolution No. 86-016, copy attached as Attachment B) concerning the placement of cable equipment by cable providers in the public right of way as well as on private property subject to a public right of way or public utility easement, establish a reasonable set of regulations that staff believes works well for the cable providers and also the City and its residents.

The goal of these regulations is to allow the cable provider to utilize public rights of way and public utility easements to locate the equipment necessary to deliver cable services, while at the same time minimizing the impact on the public use of the right of way and the disturbance, disruption and damage to private property. These provisions provide for appropriate advance notice of the proposed location of equipment; an opportunity for the property owner to consent or object to the proposed location, and to

request an alternate location; impose on the cable provider an obligation “to utilize all reasonable methods and materials to mitigate and ameliorate the placement, effect and appearance of the aboveground pedestals upon surrounding property and improvements.”

Staff has found the regulations governing cable providers’ use of public rights of way and public utility easements to work well for all concerned. Staff believes it would be reasonable and appropriate to establish comparable regulations to govern the use of the right of way and public utility easements by non cable providers, such as telephone and telecommunications providers. These issues are currently addressed on an ad hoc basis, and are often addressed after a complaint from a citizen after installation of the equipment, or when staff notices new equipment that is inappropriately placed in the right of way or public utility easement. While an encroachment permit is required when a non-cable utility or service provider excavates the street, there is not a comparable requirement that provides advance notice and an opportunity to consider alternative locations for placement of the equipment.

The attached resolution directs staff to prepare for Council consideration amendments to the City Code to establish reasonable regulations for the use of the public rights of way and public utility easements by non-cable service providers, including telephone and telecommunications providers. Staff intends to work with these providers in formulating the regulations.

**Financial Considerations:**

Currently the City receives about \$2 million in franchise fees from the cable commission. This is General Fund revenue and thus funds a number of services. The \$2 millions is at risk due to the narrower definition of gross revenues and the fact that it will pass through the state before coming to the City.

**Environmental Considerations:**

None.

**Policy Considerations:**

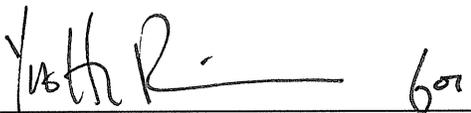
The City of Sacramento strongly supports greater competition in the delivery of video service and understands that competition will result in more affordable services and improved quality of telecommunication services for city residents. Staff’s recommended actions are consistent with the City’s policy of maintaining local control over local right-of-ways and requiring cable service providers follow the established rules and procedures for providing cable service.

It is critical for the City to maintain the ability to negotiate with the service providers the aesthetics of the “street furniture” that they install and have a set of procedural rules to deal with damaged water and gas lines. Each community is unique and it is important to our residents that they have a say and some control over what is being placed in their neighborhoods and a quick response to damage to water and gas lines.

AB 2987 and H.R. 5252 do not guarantee competition for all City residents; do not provide for local control over the aesthetics of "street furniture" in our neighborhoods; do not provide for a practical manner to deal with health and safety issues relating to our right to ways; and would likely result in a loss of revenue to the City's General Fund.

**Emerging Small Business Development (ESBD):**

Not applicable.

Approved by:   
Patti Bisharat, Government Affairs

APPROVED:

  
RAY KERRIDGE  
for City Manager

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## RESOLUTION NO.

Adopted by the Sacramento City Council

Date

A RESOLUTION APPROVING STANDARD LANGUAGE FOR ENCROACHMENT PERMITS FOR AT&T FOR PROJECT LIGHTSPEED AND FOR OTHER CABLE PROVIDERS, AND DIRECTING STAFF TO PREPARE AMENDMENTS TO THE CITY CODE TO ESTABLISH REGULATIONS TO REGULATE THE PLACEMENT OF TELEPHONE AND AND TELECOMMUNICATIONS EQUIPMENT USE OF PUBLIC RIGHTS OF WAY AND PUBLIC UTILITY EASEMENTS

### BACKGROUND

- A. AT&T has requested encroachment permits for use of City right of way in conjunction with its Project Lightspeed. The Sacramento Metropolitan Cable Television Commission, a joint powers authority that regulates cable providers within the City of Sacramento as well as throughout the County, has advised that the services to be provided by AT&T through Project Lightspeed constitute cable service within the meaning of the local ordinances, and that AT&T, and others who seek to provide similar services, must therefore obtain a license from SMCTC to provide such services..
- B. The City Code provisions governing providers of cable service, set forth in Article V of Chapter 5.28 (Sections 5.28.900-5.28.1250) and the "above ground pedestal" regulations adopted by SMCTC (SMCTC Resolution No. 86-016 concerning the placement of cable equipment by cable providers in the public right of way as well as on private property subject to a public right of way or public utility easement, establish a reasonable set of regulations that staff believes works well for the cable providers and also the City and its residents.
- C. It would be reasonable and appropriate to establish similar regulations to govern the placement of telephone and telecommunications equipment in the public rights of way and in public utility easements.

### BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

**Section 1.** Any and all City encroachment permits or similar entitlements authorizing the installation of telephone and telecommunications equipment in City rights of way and public utility easements that are issued to AT&T in conjunction with Project Lightspeed, and to others seeking to provide similar cable services, shall include

language substantially in the form set forth in Attachment 1, to require the issuance of a license by the Sacramento Metropolitan Cable Television Commission; and

**Section 2.** City staff is directed to prepare, for Council consideration, amendments to the City Code to establish regulations to govern the placement, safety and compatibility of telephone and telecommunications equipment, including above ground utility boxes and appurtenances, when placed in City rights of way and public utility easements.

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Exhibit A

## EXHIBIT A

### Encroachment Permit Condition of Approval for Project Lightspeed.

The **City** will require a license issued by the Sacramento Metropolitan Cable Television Commission ("SMCTC") to AT&T, AT&T California and/or their affiliates ("AT&T") prior to AT&T providing Video or IP Video Programming over any equipment or infrastructure constructed or improved under this encroachment permit. Under current state and federal law, a local franchise or license is required to provide Video and/or and IP Video Programming over any equipment or infrastructure constructed or improved under this encroachment permit. This permit is not an authorization by the **City** under California Government Code § 53066 or under 47 U.S.C. § 541 for the use of any facilities installed pursuant to this encroachment permit for Video or IP Video programming.

The issuance of this Encroachment Permit shall not create any right, vested or otherwise, to AT&T to provide video programming (whether through IP protocols or other technology) using facilities that utilize the **City's** public right of way. No facilities other than those authorized by and used for purposes within the scope of California Public Utilities Code § 7901 may be constructed, installed, maintained, or repaired pursuant to this permit and, as stated above, a license from SMCTC will be required prior to the use of any facilities or infrastructure constructed pursuant to this encroachment permit for the provision of Video or IP Video Programming. . The grant of this permit by **City** and performance of work authorized by the permit to AT&T is not intended by **City** and AT&T to have the effect, and does not have the effect, of waiver of or prejudice to either **City** or AT&T to assert their respective legal rights under local, state and federal law.

Any provision of Video or IP Video Programming over any equipment or infrastructure constructed or improved under this encroachment permit without first obtaining a license from SMCTC to provide Video or IP Video Programming within the **City** shall constitute a violation of the terms of this Encroachment Permit. .

**PROPOSED CITY/COUNTY ENCROACHMENT PERMIT  
CONDITION OF APPROVAL FOR PROJECT LIGHTSPEED**

The **City/County** will require a license issued by the Sacramento Metropolitan Cable Television Commission ("SMCTC") to AT&T, AT&T California and/or their affiliates ("AT&T") prior to AT&T providing Video or IP Video Programming over any equipment or infrastructure constructed or improved under this encroachment permit. Under current state and federal law, a local franchise or license is required to provide Video and/or and IP Video Programming over any equipment or infrastructure constructed or improved under this encroachment permit. This permit is not an authorization by the **City/County** under California Government Code § 53066 or under 47 U.S.C. § 541 for the use of any facilities installed pursuant to this encroachment permit for Video or IP Video programming.

The issuance of this Encroachment Permit shall not create any right, vested or otherwise, to AT&T to provide video programming (whether through IP protocols or other technology) using facilities that utilize the **City's/County's** public right of way. No facilities other than those authorized by and used for purposes within the scope of California Public Utilities Code § 7901 may be constructed, installed, maintained, or repaired pursuant to this permit and, as stated above, a license from SMCTC will be required prior to the use of any facilities or infrastructure constructed pursuant to this encroachment permit for the provision of Video or IP Video Programming. . The grant of this permit by **City/County** and performance of work authorized by the permit to AT&T is not intended by **City/County** and AT&T to have the effect, and does not have the effect, of waiver of or prejudice to either **City/County** or AT&T to assert their respective legal rights under local, state and federal law.

Any provision of Video or IP Video Programming over any equipment or infrastructure constructed or improved under this encroachment permit without first obtaining a license from SMCTC to provide Video or IP Video Programming within the **City/County** shall constitute a violation of the terms of this Encroachment Permit. .

RESOLUTION NO. 86-016

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SACRAMENTO METROPOLITAN CABLE TELEVISION COMMISSION ADOPTING AND IMPLEMENTING ABOVE-GROUND PEDESTAL REGULATIONS

WHEREAS, the SACRAMENTO METROPOLITAN CABLE TELEVISION COMMISSION (hereinafter "the Commission") pursuant to the Cable Television Ordinance (hereinafter "the Cable Television Ordinance"), adopted a resolution offering a franchise (hereinafter "the Franchise Resolution") on or about November 25, 1983 offering a franchise to SACRAMENTO CABLE TELEVISION, then known as "Cablevision of Sacramento," and its related entities (hereinafter "the Franchisee"); and

WHEREAS, pursuant to the Cable Television Ordinance, the Franchisee has the right to enter upon private property within the public rights-of-way and to install thereupon its cable television system without the further approval of the private property owner; and

WHEREAS, the Commission and the Franchisee nonetheless desire to ensure that the installation of said system inflicts minimal disturbance, disruption, and damage to private property; and

WHEREAS, the Franchise originally proposed, and accordingly the provisions of the Franchise Resolution required, that the cable system be constructed utilizing underground vaults for electrical components; and

WHEREAS, the Franchisee requested by letter dated June 13, 1984 and pursuant to the Commission's equivalency determination procedure that it be permitted to place all electronic components of the underground system in aboveground pedestals rather than in underground vaults;

WHEREAS, on or about July 5, 1984, the Commission did approve the installation of such aboveground pedestals upon certain terms and conditions; and

WHEREAS, the Commission now desires to restate, clarify and amplify those terms and conditions in the form of rules and regulations of the Commission; and

WHEREAS, the Board of Directors of the Commission has the power to adopt all necessary rules and regulations pursuant to Section 5.50.552 and to make those rules and regulations binding upon existing franchisees;

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SACRAMENTO METROPOLITAN CABLE TELEVISION COMMISSION THAT:

1. Pursuant to Ordinance Section 5.50.552, the Commission hereby enacts the following regulations which shall be known as and may be cited as the "Pedestal Regulations" of the Commission:

Section 1.00. Use of Aboveground Pedestals

## RESOLUTION NO. 86-016

The Franchisee shall be authorized to place active and passive electronic devices including line extenders, amplifiers, power supplies, subscriber taps and directional couplers within pedestals above ground level in areas of the system which would otherwise be required to be underground only in strict compliance with the provisions of these regulations.

### Section 1.01. Interpretation - Burden of Proof

In any proceeding or procedure wherein these regulations shall be applied or interpreted, these regulations shall be applied or interpreted, these regulations shall be liberally construed to protect the interests of the property owner, and the Franchisee shall at all times have the burden of establishing its compliance with these regulations by clear and convincing evidence.

### Section 1.02. Duty of Reasonable Efforts

Notwithstanding any other provision hereof, the Franchisee shall at all times have the duty to utilize all reasonable methods and materials to mitigate and ameliorate the placement, effect and appearance of the aboveground pedestals upon surrounding property and improvements. Such methods and materials shall include the installation at the sole cost and expense of the Franchisee of all reasonable landscaping and other visual screening materials such as shrubs and bushes of the reasonable selection of the Franchisee.

### Section 2.00. Consent to Placement

Prior to the installation of the aboveground pedestal, the Franchisee shall secure the prior, express permission ("consent") of an owner of record ("the property owner") of the property ("the property") for the placement of the pedestal.

### Section 2.01. Franchisee's Establishment of Consent

Consent shall be deemed to have been given when the Franchisee shall establish by clear and convincing evidence that:

- (1)The property owner has given actual consent; or
- (2)The property owner has given constructive consent in that:
  - a.The property owner did in fact receive each of the required preconstruction notices pursuant to Section 3.00 et seq., infra.; and
  - b.The property owner did not file a written complaint with the Franchisee and/or the Commission prior to the earlier of the estimated date of installation or the date of actual installation.

### Section 3.00. Preconstruction Information

Prior to the initiation of construction of any portion of the system which will involve the installation of aboveground pedestals, the Franchisee shall give preconstruction notice to an owner of record of each property which will be so effected in accordance with this section.

## RESOLUTION NO. 86-016

- a. The first notification ("the first notice") shall be given by the Franchisee to the property owner not sooner than forty five (45) days nor later than fourteen (14) days prior to actual construction on the property; and
- b. The second notification ("the second notice") shall be given by the Franchisee to the property owner not sooner than fourteen (14) days nor later than three (3) days prior to actual construction on the property.

### Section 3.01. Contents of Notice

Both notices pursuant to Section 3.00 supra shall contain a physical description of the aboveground pedestals, including without limitation (1) a sketch or picture of said pedestals; (2) the dimensions of such pedestals; (3) a statement of the number of pedestals to be installed per block; (4) a depiction or description as to the approximate location on each block where pedestals will be placed; (5) a description of the approximate location of each pedestal within the easement; and (6) a statement that the actual placement sites will be premarked prior to installation of the pedestals. The notice shall also contain (1) the Franchisee's telephone number and the title of the responsible person who will be able to answer questions; (2) the criteria by which pedestal locations are selected; and (3) the estimated date of construction.

### Section 3.02. Approval of Preconstruction Pamphlets

Both notices pursuant to Section 3.00 above shall be subject to the approval of the Executive Director of the Commission as to form and content.

### Section 3.03. Required Personal Contact

Notwithstanding any other provision hereof, the Franchisee shall make all reasonable efforts to achieve direct, personal contact prior to installation with the property owner of any property upon which the Franchisee intends to locate any aboveground pedestal which is larger than ten (10) inches by ten (10) inches and thirty six (36) inches in height and the Franchisee shall undertake all reasonable efforts to achieve agreement with the property owner as to placement of such pedestal. This section expresses a cumulative obligation of the Franchisee and shall not be construed to lessen the obligation of the Franchisee to comply with any other provision hereof.

### Section 3.04. Advisement of Appeal Rights

Notwithstanding the compliance of the Franchisee with the provisions of Section 3.00, supra, the Franchisee shall inform any person in the course of any further contact, whether by telephone, in writing, or in person, of the property owner's complaint and appeal rights under the Franchise Resolution and these Regulations. Any such advisement shall be complete upon the mailing by the Franchisee of a copy of these Regulations to the property owner.

### Section 4.00. Standard Pedestal Location

Subject to the approval of the appropriate permit-issuing authority, the Franchisee shall locate the aboveground pedestals in the public easement or right-of-way, but not within a distance

## RESOLUTION NO. 86-016

of one foot (1') from the edge of the sidewalk, or in a corresponding location in non-sidewalked areas unless in view of all of the circumstances such location is in accord with good engineering practice.

### Section 4.01. Alternate Pedestal Placement

If the property owner should object to the Standard Pedestal Location as disclosed by the Franchisee's preconstruction information pursuant to Section 3.00 supra, the Franchisee shall locate the pedestal in a location specified by the property owner without fee or charge to the property owner, provided that the location specified by the property owner is:

- a. Within an existing public utility easement; or
- b. Within a new public utility easement granted by the property owner; and
- c. Not further than forty (40) feet from the Standard Pedestal Location; and
- d. In accord with good engineering practice.

### Section 5.00. Resolution of Complaints

Any complaint of a property owner which is not resolved informally by the Franchisee, shall be resolved in accordance with the procedure set forth in Franchise Resolution Section III.4. In any instance in which a complaint relating to pedestal placement shall be referred to a hearing officer, the hearing officer shall determine the following issues:

- a. Did the property owner give consent to the placement of the pedestal; and
- b. If consent was given, did the Franchisee utilize all reasonable methods and materials to mitigate and ameliorate the placement, effect and appearance of the aboveground pedestals upon surrounding property and improvements?

If the Franchisee should fail to meet its burden of proof as to either of the foregoing issues, the hearing officer shall order such remedies in favor of the property owner as shall be reasonably necessary to achieve justice.

### Section 5.01. Limitation on Complaints

1. Any complaint brought pursuant to these Regulations shall be initiated by written complaint to the Franchisee or to the Commission not later than thirty (30) days after installation of the pedestals or equipment which are the basis of the complaint. This section is not intended to abridge or limit any right of the property owner under any other law or statute apart from these Regulations.

2. The foregoing regulations shall apply with full force and effect to the current Franchisee any future franchisees or the Commission.

RESOLUTION NO. 86-016

ON A MOTION by the Commissioner Terry Kastanis, seconded by the Commissioner Toby Johnson, the foregoing resolution was passed and adopted this 3rd day of April, 1986, by the following vote, to wit:

Ayes: Collin, Toby Johnson, Kastanis, Smallman, Fletcher

Noes:

Absent: Grantland Johnson

SACRAMENTO METROPOLITAN CABLE  
TELEVISION COMMISSION

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June 20, 2006

The Honorable Fabian Nunez  
California State Assembly  
California State Capitol  
Sacramento, CA 95814

**Re: Oppose Assembly Bill 2987 (Nunez) Statewide Cable and Video Franchising**

Dear Assembly Member Nunez:

On behalf of the City of Sacramento, I write to oppose AB 2987, which would establish a statewide franchise authority for cable and video services. We oppose this bill because it allows cable and video service providers to pick and choose the areas in the community that it will serve, thus there is no guarantee that it will increase competition for all of our residents. It would result in a loss of franchise fee revenue to the City and fails to include a set of procedural rules to follow when issues arise during the deployment of communications infrastructure in our right-of-ways. We are also concerned that, as written, the bill will require the city to pay for the conversion of the PEG channels to the fit the video service provider's transmission which would result in an additional cost to the city.

Thank you for your attention concerning the City of Sacramento's opposition to AB 2987.

Sincerely,

**HEATHER FARGO, MAYOR**  
City of Sacramento

cc: Senator Deborah Ortiz  
Senator Dave Cox  
Assembly Member Dave Jones  
Assembly Member Alan Nakanishi  
Assembly Member Roger Niello  
Members of the City Council  
David Jones, Emanuels and Jones and Associates

**ATTACHMENT D**

June 20, 2006

The Honorable Diane Feinstein  
United States Senate  
United States Capital  
Washington, DC

**Re: Oppose House Bill 5252 (Barton) National Cable and Video Franchising**

Dear Senator Feinstein:

On behalf of the City of Sacramento, I write to urge you to oppose the passage of H.R. 5252, as currently written. H.R. 5252 would establish a national franchise authority for cable and video services. We urge your opposition to this bill because it allows cable and video service providers to pick and choose the areas in the community that it will serve, thus there is no guarantee that it will increase competition for all of our residents. We are also concerned that, as written, the bill severely limits municipal authority to enforce local laws pertaining to rights of way and makes the Federal Communication Commission the right of way enforcement agency. It would result in a loss of franchise fee revenue to the City. Finally, it restricts or eliminates local government, school or public channels (PEG channels), funding for PEG channels, institutional networks and the ability of municipalities to use cable systems for local emergency alerts. Finally,

Thank you for your consideration concerning H.R. 5252.

Sincerely,

**HEATHER FARGO, MAYOR**  
City of Sacramento

cc: Senator Barbara Boxer  
House Representative Doris Matsui  
Members of the City Council  
John Freshman  
David Jones, Emanuels and Jones and Associates

**ATTACHMENT E**

June 20, 2006

The Honorable Barbara Boxer  
United States Senate  
United States Capital  
Washington, DC

**Re: Oppose House Bill 5252 (Barton) National Cable and Video Franchising**

Dear Senator Feinstein:

On behalf of the City of Sacramento, I write to urge you to oppose the passage of H.R. 5252, as currently written. H.R. 5252 would establish a national franchise authority for cable and video services. We urge your opposition to this bill because it allows cable and video service providers to pick and choose the areas in the community that it will serve, thus there is no guarantee that it will increase competition for all of our residents. We are also concerned that, as written, the bill severely limits municipal authority to enforce local laws pertaining to rights of way and makes the Federal Communication Commission the right of way enforcement agency. It would result in a loss of franchise fee revenue to the City. Finally, it restricts or eliminates local government, school or public channels (PEG channels), funding for PEG channels, institutional networks and the ability of municipalities to use cable systems for local emergency alerts. Finally,

Thank you for your consideration concerning H.R. 5252.

Sincerely,

**HEATHER FARGO, MAYOR**  
City of Sacramento

cc: Senator Diane Feinstein  
House Representative Doris Matsui  
Members of the City Council  
John Freshman  
David Jones, Emanuels and Jones and Associates

AMENDED IN ASSEMBLY MAY 31, 2006

AMENDED IN ASSEMBLY MAY 26, 2006

AMENDED IN ASSEMBLY APRIL 6, 2006

AMENDED IN ASSEMBLY MARCH 30, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2987**

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**Introduced by Assembly Members Nunez and Levine  
(Principal coauthors: Assembly Members McCarthy and Plescia)**

February 24, 2006

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An act to add Article 3.7 (commencing with Section 53058) to Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code, relating to cable and video service.

LEGISLATIVE COUNSEL'S DIGEST

AB 2987, as amended, Nunez. Cable and video service.

Existing law provides that any city, county, or city and county may authorize by franchise or license the construction and operation of a community antenna television system and prescribe rules and regulations to protect the subscribers. Existing law provides that cable and video service providers comply with specified customer service standards and performance standards.

This bill would establish a procedure for the issuance of state franchises for the provision of video service, which would be defined to include cable service and open-video systems, that would be administered by the Department of Consumer Affairs. The department would be the sole franchising authority for state franchises to provide video services. The bill would require any person who seeks to

provide video service in this state to file an application with the department for a state franchise. Cities, counties, or cities and counties would receive state franchise fees for video services provided within their jurisdictions, based on gross revenues, pursuant to specified procedures. *The bill would also authorize local entities to establish a fee to support the capital costs of public, educational, and governmental access channel facilities, in the amount of either 1% of gross revenues or a preexisting fee, whichever is lower.* The bill would require these local agencies to permit the installation of networks by holders of state franchises and would preclude enforcement of standards by the local agencies. The bill would prescribe the extent of the obligation of state franchise holders to provide public, educational, and government channels. The bill would prescribe certain customer service and protection standards and penalties for material breaches of those standards. The bill would require any state franchise holder employing more than 750 employees to make an annual report of specified information to the department.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Article 3.7 (commencing with Section 53058) is  
2 added to Chapter 1 of Part 1 of Division 2 of Title 5 of the  
3 Government Code, to read:  
4  
5 Article 3.7. The Digital Infrastructure and Video Competition  
6 Act of 2006  
7  
8 53058. This act shall be known and may be cited as the  
9 Digital Infrastructure and Video Competition Act of 2006.  
10 53058.1. (a) This article shall be known and may be cited as  
11 the Digital Infrastructure and Video Competition Act of 2006.  
12 (b) The Legislature finds and declares all of the following:  
13 (1) Video and cable services provide numerous benefits to all  
14 Californians including access to a variety of news, public  
15 information, education, and entertainment programming.  
16 (2) Increased competition in the cable and video service sector  
17 provides consumers with more choice, lowers prices, speeds the

1 deployment of new communication and broadband technologies,  
2 creates jobs, and benefits the California economy.

3 (3) To promote competition, the state should establish a  
4 state-issued franchise authorization process that allows market  
5 participants to use their networks and systems to provide video,  
6 voice, and broadband services to all residents of the state.

7 (4) Legislation to develop this new process should adhere to  
8 the following principles.

9 (i) Create a fair and level playing field for all market  
10 competitors that does not disadvantage or advantage one service  
11 provider or technology over another.

12 (ii) Promote the widespread access to the most technologically  
13 advanced cable and video services to all California communities  
14 in a nondiscriminatory manner regardless of socioeconomic  
15 status.

16 (iii) Protect local government revenues and their control of  
17 public rights of way.

18 (iv) Require market participants to comply with all applicable  
19 consumer protection laws.

20 (v) Complement efforts to increase investment in broadband  
21 infrastructure and close the digital divide.

22 (vi) Continue access to and maintenance of the public,  
23 education, and government (PEG) channels.

24 (5) Telephone corporations providing video service pursuant  
25 to this article shall not subsidize the cost of deploying network  
26 that is used to provide video service and other costs necessary to  
27 offer video service with revenue derived from the offering of  
28 basic telephone services.

29 53058.2. For purposes of this article, the following words  
30 have the following meanings:

31 (a) "Cable operator" means any person or group of persons  
32 that either provides cable service over a cable system and  
33 directly, or through one or more affiliates, owns a significant  
34 interest in a cable system; or that otherwise controls or is  
35 responsible for, through any arrangement, the management and  
36 operation of a cable system, as set forth in Section 522(5) of Title  
37 47 of the United States Code.

38 (b) "Cable service" is defined as the one-way transmission to  
39 subscribers of either video programming, or other programming  
40 service, and subscriber interaction, if any, that is required for the

- 1 selection or use of video programming or other programming  
2 service, as set forth in Section 522(6) of Title 47 of the United  
3 States Code.
- 4 (c) “Cable system” is defined as set forth in Section 522(7) of  
5 Title 47 of the United States Code.
- 6 (d) “Department” means the Department of Consumer Affairs.
- 7 (e) “Franchise” means an initial authorization, or renewal of  
8 an authorization, issued by a franchising entity, regardless of  
9 whether the authorization is designated as a franchise, permit,  
10 license, resolution, contract, certificate, agreement, or otherwise,  
11 that authorizes the construction and operation of a cable system  
12 in public rights-of-way.
- 13 (f) “Franchising entity” means the city, county, or city and  
14 county entitled to require franchises and impose fees on cable  
15 operators, as set forth in Section 53066.
- 16 (g) “Incumbent cable operator” means the cable operator  
17 serving the largest number of cable subscribers in a particular  
18 city, county, or city and county franchise area on the effective  
19 date of this article.
- 20 (h) “Local entity” means any city, county, or city and county  
21 within the state within whose jurisdiction a holder of a  
22 state-issued authorization under this article may provide cable  
23 service or video service.
- 24 (i) “Network” means a component of a facility that is wholly  
25 or partly physically located within a public right-of-way and that  
26 is used to provide video service, cable service, or voice or data  
27 services.
- 28 (j) “Open-video system” or “OVS” means those services set  
29 forth in Section 573 of Title 47 of the United States Code.
- 30 (k) “OVS operator” means any person or group of persons that  
31 either provides cable service over an open-video system directly,  
32 or through one or more affiliates, owns a significant interest in an  
33 open-video system, or that otherwise controls or is responsible  
34 for, through any arrangement, the management of an open-video  
35 system.
- 36 (l) “Public right-of-way” means the area along and upon any  
37 public road or highway, or along or across any of the waters or  
38 lands within the state.
- 39 (m) “State franchise” means a franchise that is issued pursuant  
40 to this article.

1 (n) “Subscriber” means a person who lawfully receives cable  
2 service or video service from the holder of a state-issued  
3 authorization or franchise for a fee.

4 (o) “Video programming” means programming provided by,  
5 or generally considered comparable to programming provided  
6 by, a television broadcast station, as set forth in Section 522(20)  
7 of Title 47 of the United States Code.

8 (p) “Video service” means video programming services, cable  
9 service, or OVS service provided through facilities located at  
10 least in part in public rights-of-way without regard to delivery  
11 technology, including Internet protocol technology. This  
12 definition does not include any video programming provided by  
13 a commercial mobile service provider defined in Section 322(d)  
14 of Title 47 of the United States Code or video programming  
15 provided via an Internet access service as that term is defined in  
16 Section 231(e)(4) of Title 47 of the United States Code.

17 (q) “Video service provider” means an entity providing video  
18 service. This term does not include an incumbent cable operator.

19 53058.3. (a) The Department of Consumer Affairs is the sole  
20 franchising authority for a state franchise to provide video  
21 service under this article. Neither the department nor any  
22 franchising entity or other local entity of the state may require the  
23 holder of a state franchise to obtain a separate franchise or  
24 otherwise impose any fee or requirement on any holder of a state  
25 franchise except as expressly provided in this article. Sections  
26 53066, 53066.01, 53066.2, and 53066.3 shall not apply to holders  
27 of a state franchise.

28 (b) The application process described in subdivisions (d) and  
29 (e) and the authority granted to the department under this section  
30 shall not exceed the provisions set forth in this section.

31 (c) Any person or corporation who seeks to provide cable  
32 service or video service in this state after the effective date of this  
33 article shall file an application for a state franchise with the  
34 department. The department may impose a fee on the applicant  
35 that shall not exceed the actual and reasonable costs of  
36 processing the application and shall not be levied for general  
37 revenue purposes.

38 (d) The application for a state franchise shall be made on a  
39 form prescribed by the department and shall include all of the  
40 following:

- 1 (1) A sworn affidavit, signed by an officer or another person  
2 authorized to bind the applicant, that affirms all of the following:
- 3 (A) That the applicant has filed or will timely file with the  
4 Federal Communications Commission all forms required by the  
5 Federal Communications Commission before offering cable  
6 service or video service in this state.
- 7 (B) That the applicant agrees to comply with all federal and  
8 state statutes, rules, and regulations, including, but not limited to,  
9 the following:
- 10 (i) A statement that the applicant will not discriminate in the  
11 provision of video or cable services as provided in Section  
12 53058.7.
- 13 (ii) A statement that the applicant will abide by all applicable  
14 consumer protection laws and rules as provided in Section  
15 53058.8.
- 16 (iii) A statement that the applicant will remit the fee required  
17 by Section 53058.4 to the local entity.
- 18 (iv) A statement that the applicant will provide PEG channels  
19 as required by Section 53058.5.
- 20 (C) That the applicant agrees to comply with all lawful city,  
21 county, or city and county regulations regarding the time, place,  
22 and manner of using the public rights-of-way, including, but not  
23 limited to, payment of applicable encroachment, permit, and  
24 inspection fees.
- 25 (D) That the applicant will concurrently deliver a copy of the  
26 application to any local entity where the applicant will provide  
27 service.
- 28 (2) The applicant's legal name and any name under which the  
29 applicant does or will do business in this state.
- 30 (3) The address and telephone number of the applicant's  
31 principal place of business, along with contact information for  
32 the person responsible for ongoing communications with the  
33 department.
- 34 (4) The names and titles of the applicant's principal officers.
- 35 (5) The legal name, address, and telephone number of the  
36 applicant's parent company, if any.
- 37 (6) A description of the service area footprint to be served  
38 including the socioeconomic information of all residents within  
39 the service area footprint.

1 (7) If the applicant is a telephone corporation, as defined in  
2 Section 234 of the Public Utilities Code, a description of the  
3 territory in which the company provides telephone service. The  
4 description shall include socioeconomic information of all  
5 residents within in the telephone corporation's service territory.

6 (8) The expected date for the deployment of video service in  
7 each of the areas identified in paragraph (6).

8 (9) Adequate assurance that the applicant possesses the  
9 financial, legal, and technical qualifications necessary to  
10 construct and operate the proposed system and promptly repair  
11 any damage to the public right-of-way caused by the applicant.

12 (e) (1) The department shall notify an applicant for a state  
13 franchise and any affected local entities whether the applicant's  
14 affidavit described by subdivision (d) is complete or incomplete  
15 before the 30th calendar day after the applicant submits the  
16 affidavit.

17 (2) If the department finds the affidavit is complete, it shall  
18 issue a state franchise before the 14th calendar day after that  
19 finding.

20 (3) If the department finds that the application is incomplete, it  
21 shall specify with particularity the items in the application that  
22 are incomplete and permit the applicant to amend the application  
23 to cure any deficiency. The department shall have 30 calendar  
24 days from the date the application is amended to determine its  
25 completeness.

26 (4) The failure of the department to notify the applicant of the  
27 completeness or incompleteness of the applicant's affidavit  
28 before the 44th calendar day after receipt of an affidavit shall be  
29 deemed to constitute issuance of the certificate applied for  
30 without further action on behalf of the applicant.

31 (f) The state franchise issued by the department shall contain  
32 all of the following:

33 (1) A grant of authority to provide video service, in exchange  
34 for the franchise fee required in Section 53058.4, in the service  
35 area footprint as requested in the application.

36 (2) A grant of authority to use the public rights-of-way in the  
37 delivery of video service, subject to the laws of this state.

38 (3) A statement that the grant of authority is subject to lawful  
39 operation of the cable service or video service by the applicant or  
40 its successor in interest.

1 (g) The state franchise issued by the department may be  
2 terminated by the video service provider by submitting notice to  
3 the department.

4 (h) Subject to the notice requirements of this article, a state  
5 franchise may be transferred to any successor in interest of the  
6 holder to which the certificate is originally granted, provided that  
7 the transferee first submits all of the information required of the  
8 applicant by this section to the department.

9 (i) In connection with, or as a condition of, receiving a state  
10 franchise, the department shall require a holder to notify the  
11 department and any applicable local entity within 14 business  
12 days of any of the following changes involving the holder or the  
13 state franchise:

14 (1) Any transaction involving a change in the ownership,  
15 operation, control, or corporate organization of the holder,  
16 including a merger, an acquisition, or a reorganization.

17 (2) A change in the holder's legal name or the adoption of, or  
18 change to, an assumed business name. The holder shall submit to  
19 the department a certified copy of either of the following:

20 (A) The amended state franchise.

21 (B) The certificate of assumed business name.

22 (3) A change in the holder's principal business address or in  
23 the name of the person authorized to receive notice on behalf of  
24 the holder.

25 (4) Any transfer of the state franchise to a successor in interest  
26 of the holder. The holder shall identify the successor in interest to  
27 which the transfer is made.

28 (5) The termination of any state franchise issued under this  
29 article. The holder shall identify both of the following:

30 (A) The number of customers in the service area covered by  
31 the state franchise being terminated.

32 (B) The method by which the holder's customers were notified  
33 of the termination.

34 (6) A change in one or more of the service areas of this article  
35 that would increase or decrease the territory within the service  
36 area. The holder shall describe the new boundaries of the affected  
37 service areas after the proposed change is made.

38 (j) As a condition of receiving a state franchise, the holder  
39 shall notify all applicable local entities that the local entity is  
40 included in the holder's service area under the state franchise

1 being issued and that the holder intends to provide video service  
2 in the local entity's jurisdiction. The holder shall give the notice  
3 required under this subdivision not later than 10 days before the  
4 holder begins providing video service in the local entity's  
5 jurisdiction.

6 (k) The department shall develop information guides and other  
7 tools to help educate local entities and other interested parties  
8 about the various provisions of this article.

9 53058.4. (a) The holder of a state franchise that offers video  
10 service within the jurisdiction of the local entity shall calculate  
11 and remit to the local entity a state franchise fee, as provided in  
12 this section. The obligation to remit the state franchise fee to a  
13 local entity begins immediately upon provision of video service  
14 within that local entity's jurisdiction. However, the remittance  
15 shall not be due until the time of the first quarterly payment  
16 required under subdivision (g) that is at least 180 days after the  
17 provision of service began. The fee remitted to a city or city and  
18 county shall be based on gross revenues earned within that  
19 jurisdiction. The fee remitted to a county shall be based on gross  
20 revenues earned within the unincorporated area of the county. No  
21 fee under this section shall become due unless the local entity  
22 provides documentation to the holder of the state franchise  
23 supporting the percentage paid by the incumbent cable operator  
24 serving the area within the local entity's jurisdiction, as provided  
25 below. The fee shall be calculated as a percentage of the holder's  
26 gross revenues, as defined in subdivision (d).

27 (b) The state franchise fee shall be a percentage of the holder's  
28 gross revenues, as defined in subdivision (d), as follows:

29 (1) If there is an incumbent cable operator, the fee shall not be  
30 more than 5 percent of the holder's gross revenues or the  
31 percentage applied by the local entity to the gross revenue of the  
32 incumbent cable operator, whichever is lesser.

33 (2) If there is no incumbent cable operator or upon the  
34 expiration of the incumbent cable operator's franchise, a local  
35 entity may, by ordinance, set the percentage applied to the gross  
36 revenues of all video service providers, provided that the fee  
37 shall not exceed 5 percent of gross revenues and shall be applied  
38 equally to all video service providers in the local entity's  
39 jurisdiction.

1 (c) No local entity or any other political subdivision of this  
2 state may demand any additional fees or charges or other  
3 remuneration of any kind from the holder of a state franchise  
4 based solely on its status as a provider of video or cable services  
5 other than as set forth in this section and may not demand the use  
6 of any other calculation method or definition of gross revenues.  
7 However, nothing in this section shall be construed to limit a  
8 local entity's ability to impose utility user taxes and other  
9 generally applicable taxes, fees, and charges under other  
10 applicable provisions of state law that are applied in a  
11 nondiscriminatory and competitively neutral manner.

12 (d) For purposes of this section, the term "gross revenues"  
13 means all revenue actually received by the holder of a state  
14 franchise, as determined in accordance with generally accepted  
15 accounting principles, that is derived from the operation of the  
16 holder's network to provide cable or video service within the  
17 jurisdiction of the local entity, including all of the following:

18 (1) All charges billed to subscribers for any and all cable  
19 service or video service provided by the holder of a state  
20 franchise, including all revenue related to programming provided  
21 to the subscriber, equipment rentals, late fees, and not sufficient  
22 fund fees.

23 (2) Any fees imposed on the holder of a state franchise by this  
24 section that are passed through to, and paid by, the subscribers.

25 (3) Compensation received by the holder of a state franchise  
26 that is derived from the operation of the holder's network to  
27 provide cable service or video service with respect to  
28 commissions that are paid to the holder of a state-issued  
29 authorization as compensation for promotion or exhibition of any  
30 products or services on the holder's network, such as a "home  
31 shopping" or similar channel, subject to paragraph (4) of  
32 subdivision (e).

33 (4) A pro rata portion of all revenue derived by the holder of a  
34 state franchise or its affiliates pursuant to compensation  
35 arrangements for advertising derived from the operation of the  
36 holder's network to provide video service within the jurisdiction  
37 of the local entity, subject to paragraph (1) of subdivision (e).  
38 The allocation shall be based on the number of subscribers in the  
39 local entity divided by the total number of subscribers in relation  
40 to the relevant regional or national compensation arrangement.

1 (e) For purposes of this section, the term “gross revenue” set  
2 forth in subdivision (d) does not include any of the following:

3 (1) Amounts not actually received, even if billed, such as bad  
4 debt; refunds, rebates, or discounts to subscribers or other third  
5 parties; or revenue imputed from the provision of cable services  
6 or video services for free or at reduced rates to any person as  
7 required or allowed by law, including, but not limited to, the  
8 provision of these services to public institutions, public schools,  
9 governmental agencies, or employees other than forgone revenue  
10 chosen not to be received in exchange for trades, barter,  
11 services, or other items of value.

12 (2) Revenues received by any affiliate or any other person in  
13 exchange for supplying goods or services used by the holder of a  
14 state franchise to provide cable services or video services.  
15 However, revenue received by an affiliate of the holder from the  
16 affiliate’s provision of cable or video service shall be included in  
17 gross revenue as follows:

18 (A) To the extent that treating the revenue as revenue of the  
19 affiliate, instead of revenue of the holder, would have the effect  
20 of evading the payment of fees that would otherwise be paid to  
21 the local entity.

22 (B) The revenue is not otherwise subject to fees to be paid to  
23 the local entity.

24 (3) Revenue derived from services classified as noncable  
25 services or nonvideo services under federal law, including, but  
26 not limited to, revenue derived from telecommunications services  
27 and information services, other than cable services or video  
28 services, and any other revenues attributed by the holder of a  
29 state franchise to noncable services or nonvideo services in  
30 accordance with Federal Communications Commission rules,  
31 regulations, standards, or orders.

32 (4) Revenue paid by subscribers to “home shopping” or  
33 similar networks directly from the sale of merchandise through  
34 any home shopping channel offered as part of the cable services  
35 or video services. However, commissions or other compensation  
36 paid to the holder of a state franchise by “home shopping” or  
37 similar networks for the promotion or exhibition products or  
38 services shall be included in gross revenue.

1 (5) Revenue from the sale of cable services or video services  
2 for resale in which the reseller is required to collect a fee similar  
3 to the state franchise fee from the reseller's customers.

4 (6) Amounts billed to and collected from subscribers to  
5 recover any tax, fee, or surcharge imposed by any governmental  
6 entity on the holder of a state franchise, including, but not limited  
7 to, sales and use taxes, gross receipts taxes, excise taxes, utility  
8 users taxes, public service taxes, communication taxes, and any  
9 other fee not imposed by this section.

10 (7) Revenue from the sale of capital assets or surplus  
11 equipment not used by the purchaser to receive cable services or  
12 video services from the seller of those assets or surplus  
13 equipment.

14 (8) Revenue from directory or Internet advertising revenue,  
15 including, but not limited to, yellow pages, white pages, banner  
16 advertisement, and electronic publishing.

17 (9) Revenue received as reimbursement by programmers of  
18 marketing costs incurred by the holder of a state franchise for the  
19 introduction of new programming.

20 (10) Security deposits received from subscribers, excluding  
21 security deposits applied to the outstanding balance of a  
22 subscriber's account and thereby taken into revenue.

23 (f) For purposes of this section, in the case of a video service  
24 that may be bundled or integrated functionally with other  
25 services, capabilities, or applications, the state franchise fee shall  
26 be applied only to the gross revenue, as defined in subdivision  
27 (d), attributable to cable service or video service, as reflected on  
28 the books and records of the holder kept in the regular course of  
29 business in accordance with generally accepted accounting  
30 principles and Federal Communications Commission or Public  
31 Utilities Commission rules, regulations, standards, and orders, as  
32 applicable.

33 (g) The state franchise fee shall be remitted to the applicable  
34 local entity quarterly, within 45 days after the end of the quarter  
35 for the preceding calendar quarter. Each payment shall be  
36 accompanied by a summary explaining the basis for the  
37 calculation of the state franchise fee. If the holder does not pay  
38 the franchise fee when due, the holder shall pay a late payment  
39 charge at a rate per year equal to the highest prime lending rate  
40 during the period of delinquency, plus 1 percent. If the holder has

1 overpaid the franchise fee, it may deduct the overpayment from  
2 its next quarterly payment.

3 (h) Not more than once annually, a local entity may examine  
4 the business records of a holder of a state franchise to the extent  
5 reasonably necessary to ensure compensation in accordance with  
6 subdivision (a). The holder shall keep all business records  
7 reflecting any gross revenues, even if there is a change in  
8 ownership, for at least four years after those revenues are  
9 recognized by the holder on its books and records. If the  
10 examination discloses that the holder has underpaid franchise  
11 fees by more than 5 percent during the examination period, the  
12 holder shall pay all of the reasonable and actual costs of the  
13 examination. If the examination discloses that the holder has not  
14 underpaid franchise fees, the local entity shall pay all of the  
15 reasonable and actual costs of the examination. In every other  
16 instance, each party shall bear its own costs of the examination.  
17 Any claims by a local entity that compensation is not in  
18 accordance with subdivision (a), and any claims for refunds or  
19 other corrections to the remittance of the holder of a state-issued  
20 authorization, shall be made within three years and 45 days of the  
21 end of the quarter for which compensation is remitted, or three  
22 years from the date of the remittance, whichever is later. Either a  
23 local entity or the holder may, in the event of a dispute  
24 concerning compensation under this section, bring an action in a  
25 court of competent jurisdiction.

26 (i) The holder of a state franchise may identify and collect the  
27 amount of the state franchise fee as a separate line item on the  
28 regular bill of each subscriber.

29 53058.5. (a) The holder of a state franchise shall designate a  
30 sufficient amount of capacity on its network to allow the  
31 provision of the same number of PEG channels, that the  
32 incumbent cable operator has activated and provided within the  
33 local entity under the terms of any franchise in effect in the local  
34 entity as of the effective date of this article. For the purposes of  
35 this section, a PEG channel is deemed activated if it is being  
36 utilized for PEG programming within the municipality for at least  
37 eight hours per day. The holder shall have six months from the  
38 date the local entity requests the PEG channels to designate the  
39 capacity. However, the six-month period shall be tolled by any  
40 period during which the designation or provision of PEG channel

1 capacity is technically infeasible, including any failure or delay  
2 of the incumbent cable operator to make adequate  
3 interconnection available, as required by this subdivision.

4 (b) The PEG channels shall be for the exclusive use of the  
5 local entity or its designee to provide public, educational, and  
6 governmental channels. PEG channels shall be used only for  
7 noncommercial purposes. However, advertising or sponsorship  
8 recognition may be carried on the channels for the purpose of  
9 funding the operation of the channels. The PEG channels shall all  
10 be carried on the basic service tier. To the extent feasible, PEG  
11 channels shall not be separated numerically from other channels  
12 carried on the basic service tier and the channel numbers for the  
13 PEG channels shall be the same channel numbers used by the  
14 incumbent cable operator unless prohibited by federal law. After  
15 the initial designation of PEG channel numbers, the channel  
16 numbers shall not be changed without the agreement of the local  
17 entity unless the change is required by federal law. Each channel  
18 shall be capable of carrying a National Television System  
19 Committee (NTSC) television signal.

20 (c) If no PEG channels are activated and provided within the  
21 local entity as of the effective date of this article, a local entity  
22 whose jurisdiction lies within the authorized service area of the  
23 holder of a state franchise may request the holder to designate not  
24 more than a total of three PEG channels.

25 The holder shall have six months from the date of the request  
26 to designate the capacity. However, the six-month period shall be  
27 tolled by any period during which the designation or provision of  
28 PEG channel capacity is technically infeasible, including any  
29 failure or delay of the incumbent cable operator to make  
30 adequate interconnection available, as required by this  
31 subdivision.

32 (d) The holder shall provide an additional PEG channel when  
33 the locally produced, nonduplicated programming televised on a  
34 given channel exceeds \_\_\_\_ hours per week, not including  
35 televised public meetings or classes in an accredited learning  
36 institution, as measured on a quarterly basis. The additional  
37 channel shall not be used for any purpose other than to continue  
38 programming additional government, education, or public access  
39 television.

1 (e) Any PEG channel provided pursuant to this section that is  
2 not utilized by the local entity for at least eight hours per day  
3 may no longer be made available to the local entity, and may be  
4 programmed at the holder's discretion. At the time that the local  
5 entity can certify to the holder a schedule for at least eight hours  
6 of daily programming, the holder of the state franchise shall  
7 restore the channel or channels for the use of the local entity.

8 (f) The content to be provided over the PEG channel capacity  
9 provided pursuant to this section shall be the responsibility of the  
10 local entity receiving the benefit of that capacity, and the holder  
11 of a state franchise bears only the responsibility for the  
12 transmission of that content, subject to technological restraints.

13 (g) The local entity shall ensure that all transmissions, content,  
14 or programming to be transmitted by a holder of a state franchise  
15 are provided or submitted in a manner or form that is standard in  
16 the industry. The holder shall be responsible for any changes in  
17 the form of the transmission necessary to make it compatible  
18 with the technology or protocol utilized by the holder to deliver  
19 services. The provision of those transmissions, content, or  
20 programming to the holder of a state franchise shall constitute  
21 authorization for the holder to carry those transmissions, content,  
22 or programming, including, at the holder's option, beyond the  
23 jurisdictional boundaries of that local entity.

24 (h) Where technically feasible, the holder of a state franchise  
25 and an incumbent cable operator shall negotiate in good faith to  
26 interconnect their networks for the purpose of providing PEG  
27 programming. Interconnection may be accomplished by direct  
28 cable, microwave link, satellite, or other reasonable method of  
29 connection. Holders of a state franchise and incumbent cable  
30 operators shall provide interconnection of PEG channels on  
31 reasonable terms and conditions and may not withhold the  
32 interconnection. If a holder of a state franchise and an incumbent  
33 cable operator cannot reach a mutually acceptable  
34 interconnection agreement, the local entity may require the  
35 incumbent cable operator to allow the holder to interconnect its  
36 network with the incumbent's network at a technically feasible  
37 point on the holder's network as identified by the holder. If no  
38 technically feasible point for interconnection is available, the  
39 holder of a state franchise shall make an interconnection

1 available to the channel originator and shall provide the facilities  
2 necessary for the interconnection.

3 (i) A holder of a state franchise shall not be required to  
4 interconnect for, or otherwise to transmit, PEG content that is  
5 branded with the logo, name, or other identifying marks of  
6 another cable operator or video service provider. For purposes of  
7 this section, PEG content is not branded if it includes only  
8 production credits or other similar information displayed at the  
9 conclusion of a program. The local entity may require a cable  
10 operator or video service provider to remove its logo, name, or  
11 other identifying marks from PEG content that is to be made  
12 available through interconnection to another provider of PEG  
13 capacity.

14 (j) In addition to any provision for PEG channels required  
15 under subdivisions (a) to (k), inclusive, the holder shall reserve,  
16 designate, and activate a channel for carriage of public affairs  
17 programming that includes live and recorded coverage of state  
18 government and state legislative activities originated by the  
19 California Channel and designate and activate a channel for  
20 carriage of public affairs programming originated by C-Span.

21 (k) After the effective date of this article and until the  
22 expiration of the incumbent cable operator's franchise, if the  
23 incumbent cable operator has existing unsatisfied obligations  
24 under the franchise to remit to the local entity any cash payments  
25 for the ongoing capital costs of public educational and  
26 governmental access channel facilities, the local entity shall  
27 divide those cash payments among all cable or video providers as  
28 provided in this section. The fee shall be the holder's pro rata per  
29 subscriber share of the cash payment required to be paid by the  
30 incumbent cable operator to the local entity for the capital costs  
31 of public, educational, and governmental access channel  
32 facilities.

33 (l) In determining the fee on a pro rata per subscriber basis, all  
34 cable and video service providers shall report, for the period in  
35 question, to the local entity the total number of subscribers  
36 served with the local entity's jurisdiction, which shall be treated  
37 as confidential by the local entity and shall be used only to derive  
38 the per subscriber fee required by this section. The local entity  
39 shall then determine the payment due from each provider based  
40 on a per subscriber basis for the period by multiplying the

1 unsatisfied cash payments for the ongoing capital costs of public,  
2 educational, and governmental access channel facilities by a ratio  
3 of the reported subscribers of each provider to the total  
4 subscribers within the local entity as of the end of the period. The  
5 local entity shall notify the respective providers, in writing, of the  
6 resulting pro rata amount. After the notice, any fees required by  
7 this section shall be remitted to the applicable local entity  
8 quarterly, within 45 days after the end of the quarter for the  
9 preceding calendar quarter, and may only be used by the local  
10 entity as authorized under federal law.

11 (m) If there is no incumbent cable operator, or upon the  
12 expiration of the incumbent cable operator's franchise, a local  
13 entity may, by ordinance, establish a fee to support the capital  
14 costs of public, educational, and governmental access channel  
15 facilities and to support institutional network facilities. The fee  
16 shall not exceed the per subscriber fee paid under subdivision (k),  
17 if such a fee was paid, or ~~\_\_\_\_\_~~ 1 percent of the holder's gross  
18 revenues, as defined in Section 53058.4, earned in the local  
19 entity, whichever is lower. ~~The~~ *For purposes of administration,*  
20 *the* fee shall be deposited in a special fund established by the  
21 local entity to be used ~~solely for the purposes provided for in this~~  
22 ~~section.~~ *for purposes allowed under federal law.*

23 (n) The following services shall continue to be provided by the  
24 incumbent cable operator that was furnishing services pursuant to  
25 a franchise until January 1, 2008, or until the term of the  
26 franchise expires, whichever is later:

27 (1) PEG production or studio facilities.

28 (2) Institutional network capacity, however defined or referred  
29 to in the incumbent cable operator's franchise, but generally  
30 referring to a private line data network capacity for use by the  
31 local entity for noncommercial purposes.

32 (3) Cable services to community public buildings, such as  
33 municipal buildings and public schools.

34 (o) The holder of a state franchise may recover the amount of  
35 any fee remitted to a local entity under this section by billing a  
36 recovery fee as a separate line item on the regular bill of each  
37 subscriber.

38 (p) A court of competent jurisdiction shall have exclusive  
39 jurisdiction to enforce any requirement under this section or  
40 resolve any dispute regarding the requirements set forth in this

1 section, and no provider may be barred from the provision of  
2 service or be required to terminate service as a result of that  
3 dispute or enforcement action.

4 53058.6. Holders of state franchises shall comply with the  
5 Emergency Alert System requirements of the Federal  
6 Communications Commission in order that emergency messages  
7 may be distributed over the holder's network.

8 53058.7. (a) The local entity shall allow the holder of a state  
9 franchise under this article to install, construct, and maintain a  
10 network within public rights-of-way under the same terms and  
11 conditions as applicable to telephone corporations, as defined  
12 under Section 234 of the Public Utilities Code, under applicable  
13 state and federal law.

14 (b) A local entity may not enforce against the holder of a state  
15 franchise any rule, regulation, or ordinance that purports to allow  
16 the local entity to purchase or force the sale of a network.

17 53058.8. (a) A cable operator or video service provider that  
18 has been granted a state franchise under this article may not  
19 discriminate against or deny access to service to any group of  
20 potential residential subscribers because of the income of the  
21 residents in the local area in which the group resides, as required  
22 by Section 541(a)(3) of Title 47 of the United States Code.

23 (b) It is the intent of the Legislature that the principles for  
24 competition in the provision of video service will require a level  
25 playing field to assure that competition is fair, will require  
26 widespread build-out of state-of-the-art services so that  
27 competition can benefit the greatest number of customers, and  
28 will prohibit discrimination, redlining, and service abandonment  
29 so that a lack of competition will not be detrimental to customers.

30 53058.9. (a) The holder of a state franchise shall comply  
31 with the provisions of Sections 53055, 53055.1, 53055.2 and  
32 53088.2, and any other customer service standards pertaining to  
33 the provision of video service required to be enforced by federal  
34 law, adopted by the department pursuant to subdivision (q) of  
35 Section 53088.2, or adopted by subsequent enactment of the  
36 Legislature.

37 (b) The local entity shall enforce all of the customer service  
38 and protection standards of this section with respect to  
39 complaints received from residents within the local entity's  
40 jurisdiction, but it may not adopt or seek to enforce any

1 additional or different customer service or other performance  
2 standards under Section 53055.3, subdivision (q), (r), or (s) of  
3 Section 53088.2, or any other authority or provision of law.

4 (c) The local entity may, by ordinance, provide a schedule of  
5 penalties for the material breach by a holder of a state franchise  
6 of this section. No monetary penalties shall be assessed for a  
7 material breach if the breach is out of the reasonable control of  
8 the holder. Further, no monetary penalties may be imposed prior  
9 to the effective date of this section. Any schedule of monetary  
10 penalties adopted pursuant to this section shall in no event  
11 exceed two hundred dollars (\$200) for each day of each material  
12 breach, not to exceed six hundred dollars (\$600) for each  
13 occurrence of material breach. However, if a material breach of  
14 this section has occurred and the city, county, or city and county  
15 has provided notice and a fine or penalty has been assessed, in a  
16 subsequent material breach of the same nature occurring within  
17 12 months, the penalties may be increased by the city, county, or  
18 city and county to a maximum of four hundred dollars (\$400) for  
19 each day of each material breach, not to exceed one thousand two  
20 hundred dollars (\$1,200) for each occurrence of the material  
21 breach. If a third or further material breach of the same nature  
22 occurs within those same 12 months, and the city, county, or city  
23 and county has provided notice and a fine or penalty has been  
24 assessed, the penalties may be increased to a maximum of one  
25 thousand dollars (\$1,000) for each day of each material breach,  
26 not to exceed three thousand dollars (\$3,000) for each occurrence  
27 of the material breach. With respect to video providers subject to  
28 a franchise or license, any monetary penalties assessed under this  
29 section shall be reduced dollar for dollar to the extent any  
30 liquidated damage or penalty provision of a current cable  
31 television ordinance, franchise contract, or license agreement  
32 imposes a monetary obligation upon a video provider for the  
33 same customer service failures, and no other monetary damages  
34 may be assessed.

35 (d) If the local entity adopts a schedule of monetary penalties,  
36 the following procedures shall be followed:

37 (1) The local entity shall give the video provider written notice  
38 of any alleged material breaches of the consumer service  
39 standards of this division and allow the video provider at least 30  
40 days from receipt of the notice to remedy the specified breach.

1 (2) A material breach for the purposes of assessing penalties  
2 shall be deemed to have occurred for each day, following the  
3 expiration of the period specified in paragraph (1), that any  
4 material breach has not been remedied by the video provider,  
5 irrespective of the number of customers affected.

6 (e) This section shall not preclude a party affected by this  
7 section from utilizing any judicial remedy available to that party  
8 without regard to this section. Actions taken by a local legislative  
9 body, including a franchising authority, pursuant to this section  
10 shall not be binding upon a court of law. For this purpose, a court  
11 of law may conduct de novo review of any issues presented.

12 53058.10. (a) The holder of a state franchise shall perform  
13 background checks of applicants for employment, according to  
14 current business practices.

15 (b) A background check equivalent to that performed by the  
16 holder shall also be conducted on all of the following:

17 (1) Persons hired by a holder under a personal service  
18 contract.

19 (2) Independent contractors and their employees.

20 (3) Vendors and their employees.

21 (c) Independent contractors and vendors shall certify that they  
22 have obtained the background checks required pursuant to  
23 subdivision (f), and shall make the background checks available  
24 to the holder upon request.

25 (d) Except as otherwise provided by contract, the holder of a  
26 state franchise shall not be responsible for administering the  
27 background checks and shall not assume the costs of the  
28 background checks of individuals who are not applicants for  
29 employment of the holder.

30 (e) (1) Subdivision (a) only applies to applicants for  
31 employment for positions that would allow the applicant to have  
32 direct contact with or access to the holder's network, central  
33 office, or customer premises, and perform activities that involve  
34 the installation, service, or repair of the holder's network or  
35 equipment.

36 (2) Subdivision (b) only applies to person that have direct  
37 contact with or access to the holder's network, central office, or  
38 customer premises, and perform activities that involve the  
39 installation, service, or repair of the holder's network or  
40 equipment.

1 (f) This section does not apply to temporary workers  
2 performing emergency functions to restore the network of a  
3 holder to its normal state in the event of a natural disaster or an  
4 emergency that threatens or results in the loss of service.

5 53058.11. (a) A holder of a state franchise employing more  
6 than 750 total employees shall annually report to the department  
7 all of the following:

8 (1) The number of California residents employed by the  
9 holder, calculated on a full-time or full-time equivalent basis.

10 (2) The percentage of the holder's total domestic workforce,  
11 calculated on a full-time or full-time equivalent basis.

12 (3) The types and numbers of jobs by occupational  
13 classification held by residents of California employed by  
14 holders of state franchises and the average pay and benefits of  
15 those jobs and, separately, the number of corporations  
16 headquartered outside of California.

17 (4) The number of California and separately, the number of  
18 out-of-state residents employed by independent contractors,  
19 companies, and consultants hired by the holder, calculated on a  
20 full-time or full-time equivalent basis, when the holder has  
21 obtained this information upon requesting it from the  
22 independent contractor, company, or consultant, and the holder is  
23 not contractually prohibited from disclosing the information to  
24 the public. This paragraph applies only to those employees of an  
25 independent contractor or consultant that are personally  
26 providing services to the holder, and does not apply to employees  
27 of an independent contractor or consultant not personally  
28 performing services for the holder.

29 (5) The holder of net new positions proposed to be created  
30 directly by the holder of a state franchise during the upcoming  
31 year by occupational classifications and by category of full-time,  
32 part-time, temporary, and contract employees.

33 (b) The department shall annually report the information  
34 required to be reported by holders of state franchises pursuant to  
35 subdivision (a), to the Assembly Committee on Utilities and  
36 Commerce and the Senate Committee on Energy, Utilities and  
37 Communications, or their successor committees, and within a  
38 reasonable time thereafter, shall make the information available  
39 to the public on its Internet Web site.

1 53058.12. (a) The provisions of this article are intended to be  
2 consistent with the Federal Cable Act (47 U.S.C. Sec. 521 et  
3 seq.).

4 (b) Nothing in this section shall be interpreted to prevent a  
5 voice provider, cable operator or video service provider, or local  
6 entity from seeking clarification of its rights and obligations  
7 under federal law or from exercising any right or authority under  
8 federal or state law.

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CORRECTIONS:

11

Text — Page 15.

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ASSEMBLY THIRD READING  
AB 2987 (Nuñez)  
As Amended May 31, 2006  
Majority vote

UTILITIES & COMMERCE 10-0  
APPROPRIATIONS 12-0

??

Ayes: Levine, Blakeslee, Baca,		Chu, Bass, Berg,	
Bogh, Cohn, De La Torre,	Ayes:	Calderon,	
Jerome Horton, Keene,		De La Torre, Haynes,	
Ridley-Thomas, Wyland		Karnette, Klehs, Leno,	
		Ridley-Thomas, Saldana,	
		Yee	

SUMMARY : Creates a mechanism for a state-issued franchise for the provision of cable and video service in California. Specifically, this bill :

- 1) Provides that the Department of Consumer Affairs (DCA) is the sole franchising authority for the state-issued authorization to provide cable and video service (video service) and that any party that seeks to provide video service in this state after the effective date of the bill shall file an application for a state-issued authorization with DCA.
- 2) Provides that the application shall contain specified provisions including statements that the applicant will comply applicable consumer protection rules, a statement that the applicant will comply with local government regulations, and a description of the area the applicant intends to serve.
- 3) Provides that DCA shall notify the applicant whether the application is complete or incomplete within 30 days of receiving the applications and shall issue a certificate of authorization within 14 days after making the notification.
- 4) Provides that a video operator may terminate the

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state-issued authorization by submitting a notice to DCA.

- 5) Requires the holder of a state franchise (holder) to notify all applicable local entities that the local entity is within the holder's service area and that the holder intends

to provide video service in the local entity's jurisdiction. The holder shall provide this notice at least 10 days before the holder begins offering video service in the local entity's jurisdiction.

- 6) Requires the holder to pay each local entity where it provides video service a franchise fee based on the gross revenue, as defined in the statute, earned within that jurisdiction. If there is an incumbent cable operator in that jurisdiction the fee shall be 5% of the holder's gross revenue or percentage applied to the incumbent's gross revenue, whichever is lesser. If there is no incumbent cable operator or upon the expiration the incumbent's franchise, the fee shall be set by the local entity but may not exceed 5% of the holder's gross revenue.
- 7) Provides that the holder shall designate a sufficient amount of capacity on its network to provide the same number of public, educational, and government (PEG) channels that the incumbent cable operator currently provides within the local entity. If no PEG channels are currently provided within that local entity, a local entity may request the holder to provide up to three PEG channels.
- 8) Provides that if there is an incumbent cable operator, or until the expiration of the incumbent's franchise, the holder shall be obligated to pay a pro rata per subscriber share of any ongoing payments the incumbent must make for the capital costs of producing PEG programming. The holder may identify and collect the fee as a separate line item in the customer's bill.
- 9) Provides that upon the expiration of the incumbent's franchise or if there is no incumbent provider, the local entity may require the holder shall pay a fee to support PEG costs. The fee cannot exceed the fee paid under the

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Page 3

incumbent's franchise or 1% of the video provider's gross revenue, which ever is less.

- 10) Provides that the incumbent cable operator shall continue to provide PEG production services and institutional network capacity in a local entity until its franchise expires or until January 1, 2008, which ever is later.
- 11) Provides that a video service provider may not discriminate against or deny access to service to any group of potential residential subscribers based on the income of residents in that local service area.
- 12) States that it is the intent of the Legislature that the principles for competition in the provision of video service

will require a level playing field to assure that competition is fair, require widespread build-out of state-of-the-art services so that competition can benefit the greatest number of customers, and prohibit discrimination, redlining, and service abandonment so that a lack of competition will not be detrimental to customers.

13) Provides that the holder shall comply with the existing video consumer service and performance standards in state law and federal law. These rules shall be enforced by the local entities.

14) Requires that a background check be performed on all applicants for employment with the holder, for employees of independent contractors and vendors to the holder who would have access to the holder's network, central office, or customer premises.

15) Requires all holders employing more than 750 employees to annually report to the DOC the number of California residents employed by the holder and the number of employees of independent contractors and vendors that provide service for the holder.

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16) Provides that a court of competent jurisdiction shall have exclusive jurisdiction to enforce the provisions of this bill regarding payment of fees, provision of PEG channels and institutional networks, and discrimination in the provision of service.

17) States that the telephone corporations providing video service under this shall not subsidize the cost of deploying network that is used to provide video service and other costs necessary to offer video service with revenue derived from the offering of basic telephone services.

EXISTING LAW :

1) Authorizes local governments to grant additional cable television franchises in an area where a franchise has already been granted after a public hearing to discuss specified issues.

2) Provides that the additional franchises must serve the same geographic area as the original franchise. Such service shall be within a reasonable time and in a sequence which doesn't discriminate against lower income or minority residents.

3) Provides that the additional franchises must also

contain the same PEG access requirements as the original franchise.

- 4) Requires all public utilities employing more than 750 total employees to annually report the number of California residents employed by the holder and the number of employees of independent contractors and vendors that provide service for the holder.

FISCAL EFFECT : According the Assembly Appropriations Committee, depending on the number of applications and the extent of statewide franchises applied for, and granted, DCA would incur significant costs, of up to several million dollars annually, to review applications and to enforce consumer service and performance standards. The bill provides for a fee to cover the

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costs of reviewing applications. All other costs would be a General Fund obligation.

COMMENTS : The purpose of this bill is to promote competition for broadband and video service. Current law requires companies seeking a new video franchise to seek a separate franchise in each local government entity where it wants to provide video service. A company wishing to provide service across the state would need to seek over 500 franchise agreements. This bill would allow a company to seek a state-issued franchise from DCA.

The author believes this bill will lead to a rapid deployment of new video and broadband services across the state as new companies, including the existing local telephone companies, make investments in existing and new networks needed to compete with the existing cable companies to provide video and internet services. This bill creates new investment in broadband internet networks because these networks are needed to provide competitive video services.

Today only a few areas of the state have multiple video operators. Instead, competition for video service comes primarily from DBS services, such as DirectTV and the DISH network, which are not required to obtain a local franchise. Today DBS service accounts for approximately 27% of the video market. A few companies are obtaining local franchise agreements to provide competing video services, but due to current franchising process this is occurring on a limited basis across the state. Some new entrants argue that the current franchising process is what has limited the number areas in the state that have multiple franchises.

The companies that wish to provide competing services claim that part of the reason why competition is slow in coming is the time it takes to negotiate individual franchise agreements across the state. They also point to another provision in state law that requires new entrants into the video market to provide video service to the entirety of the incumbent's service territory. This provision is intended to prevent new entrants from discriminating in where they decide to offer service. Some of the potential new entrants argue that this provision forces them

to build their infrastructure in a manner that is uneconomical for them and, as a consequence, they will simply opt to not compete in that franchise territory at all.

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**Franchise Fees:** This bill requires all holders of state issued franchises to pay the local government a franchise fee that can be up to 5% of their gross revenue, but cannot exceed the franchise fee that is paid by the incumbent cable provider. Federal and state law already caps franchise fees at 5%.

**Redlining:** One concern when new entrants begin providing video services is that they will choose to provide the service only to higher income neighborhoods and thus provide these areas of the state with the advantages of new technologies and competition but deny the same benefits to lower income neighborhoods, a process known as redlining. Federal and state law prohibit redlining by requiring the local franchise authorities to assure that access to video service is not denied to any group of potential residential video subscribers based on income. The local franchising authority meets this requirement by negotiating with the cable company the area company must service and by requiring the company to build to the entire service territory within a specified time and/or in a specified order.

Under the state issued franchise model proposed in this bill, the requirement that video providers cannot discriminate is maintained. This bill explicitly prohibits companies from denying access to new services based on income. Additionally this bill states legislative intent to require widespread build-out of state-of-the-art services so that competition can benefit the greatest number of customers, and prohibit discrimination, redlining, and service abandonment so that a lack of competition will not be detrimental to customers

**PEG Channels:** In almost all instances, local franchise agreements require the video operator to offer a set number of channels to provide (PEG) and to either provide the monetary or in kind support needed to produce these shows. This bill continues the obligation to provide the channels by requiring all video providers to provide the capacity for the same number of PEG channels the incumbent cable operator provides. If there is no incumbent operator, then the video provider must provide either two or three channels, depending on the population of the area to be served.

This bill then requires a new entrant to pay a pro-rata share of any on going cash obligations the incumbent operator has to support the production of PEG programming. If the incumbent does not have any ongoing expenses, but instead provides in kind support such as producing shows themselves, the new entrant will

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have no obligation to provide either cash or in-kind production support. If there is no local franchise or after the incumbent's local franchise expires, the local entity may require the holder shall pay a fee to support PEG costs. The fee cannot exceed the fee paid under the incumbent's franchise or an unset percentage, which ever is less.

Consumer protection: State law currently contains a thorough set of consumer service and performance standards. The local franchising authority enforces the standards. Some franchise agreements also adopt additional or more stringent standards. This means the consumer protection rules for video service varies from jurisdiction to jurisdiction and can even vary within a jurisdiction if there are multiple franchises. This bill provides leaves the authority to enforce consumer protection rules with the local governments but creates a uniform set of state rules based on the existing state and federal consumer protection rules.

For a more detailed analysis of the provisions of this bill and more information on the current franchising process please refer to the April 24, 2006, Assembly Utilities and Commerce Committee analysis.

Analysis Prepared by : Edward Randolph / U. & C. / (916)  
319-2083

FN: 0015049

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5252

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IN THE SENATE OF THE UNITED STATES

JUNE 12, 2006

Received; read twice and referred to the Committee on Commerce, Science,  
and Transportation

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## AN ACT

To promote the deployment of broadband networks and  
services.

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

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the  
 3 “Communications Opportunity, Promotion, and Enhance-  
 4 ment Act of 2006”.

5 (b) **TABLE OF CONTENTS.**—

Sec. 1. Short title; table of contents.

**TITLE I—NATIONAL CABLE FRANCHISING**

Sec. 101. National cable franchising.

Sec. 102. Definitions.

Sec. 103. Monitoring and reporting.

Sec. 104. Rule of construction.

**TITLE II—ENFORCEMENT OF BROADBAND POLICY STATEMENT**

Sec. 201. Enforcement of broadband policy statement.

**TITLE III—VOIP/911**

Sec. 301. Emergency services; interconnection.

Sec. 302. Compensation and contribution.

**TITLE IV—MUNICIPAL PROVISION OF SERVICES**

Sec. 401. Government authority to provide services.

**TITLE V—BROADBAND SERVICE**

Sec. 501. Stand-alone broadband service.

Sec. 502. Study of interference potential of broadband over power line systems.

**TITLE VI—SEAMLESS MOBILITY**

Sec. 601. Development of seamless mobility.

6 **TITLE I—NATIONAL CABLE**  
 7 **FRANCHISING**

8 **SEC. 101. NATIONAL CABLE FRANCHISING.**

9 (a) **AMENDMENT.**—Part III of title VI of the Com-  
 10 munications Act of 1934 (47 U.S.C. 541 et seq.) is  
 11 amended by adding at the end the following new section:

12 **“SEC. 630. NATIONAL CABLE FRANCHISING.**

13 **“(a) NATIONAL FRANCHISES.**—

1           “(1) ELECTION.—A person or group that is eli-  
2           gible under subsection (d) may elect to obtain a na-  
3           tional franchise under this section as authority to  
4           provide cable service in a franchise area in lieu of  
5           any other authority under Federal, State, or local  
6           law to provide cable service in such franchise area.  
7           A person or group may not provide cable service  
8           under the authority of this section in a franchise  
9           area unless such person or group has a franchise  
10          under this section that is effective with respect to  
11          such franchise area. A franchising authority may not  
12          require any person or group that has a national  
13          franchise under this section in effect with respect to  
14          a franchise area to obtain a franchise under section  
15          621 or any other law to provide cable service in such  
16          franchise area.

17          “(2) CERTIFICATION.—To obtain a national  
18          franchise under this section as authority to provide  
19          cable service in a franchise area, a person or group  
20          shall—

21                 “(A) file with the Commission a certifi-  
22                 cation for a national franchise containing the  
23                 information required by paragraph (3) with re-  
24                 spect to such franchise area, if such person or

1 group has not previously obtained a national  
2 franchise; or

3 “(B) file with the Commission a subse-  
4 quent certification for additional franchise areas  
5 containing the information required by para-  
6 graph (3) with respect to such additional fran-  
7 chise areas, if such person or group has pre-  
8 viously obtained a national franchise.

9 “(3) CONTENTS OF CERTIFICATION.—Such cer-  
10 tification shall be in such form as the Commission  
11 shall require by regulation and shall contain—

12 “(A) the name under which such person or  
13 group is offering or intends to offer cable serv-  
14 ice;

15 “(B) the names and business addresses of  
16 the directors and principal executive officers, or  
17 the persons performing similar functions, of  
18 such person or group;

19 “(C) the location of such person or group’s  
20 principal business office;

21 “(D) the name, business address, elec-  
22 tronic mail address, and telephone and fax  
23 number of such person or group’s local agent;

24 “(E) a declaration by such person or group  
25 that such person or group is eligible under sub-

1 section (d) to obtain a national franchise under  
2 this section;

3 “(F) an identification of each franchise  
4 area in which such person or group seeks au-  
5 thority to offer cable service pursuant to such  
6 certification, which franchise area shall be—

7 “(i) the entirety of a franchise area in  
8 which a cable operator is, on the date of  
9 the filing of such certification, authorized  
10 to provide cable service under section 621  
11 or any other law (including this section);  
12 or

13 “(ii) a geographic area that covers the  
14 entirety of the jurisdiction of a unit of gen-  
15 eral local government, except that—

16 “(I) if the geographic area over-  
17 laps with a franchise area in which a  
18 cable operator is, on such date, au-  
19 thorized to provide cable service under  
20 section 621 or any other law, the geo-  
21 graphic area identified in the certifi-  
22 cation under this clause as a franchise  
23 area shall not include the overlapping  
24 area; and

1                   “(II) if such geographic area in-  
2                   cludes areas that are, respectively,  
3                   within the jurisdiction of different  
4                   franchising authorities, the certifi-  
5                   cation shall specify each such area as  
6                   a separate franchise area;

7                   “(G) a declaration that such person or  
8                   group transmitted, or will transmit on the day  
9                   of filing such declaration, a copy of such certifi-  
10                  cation to the franchising authority for each  
11                  franchise area for which such person or group  
12                  is filing a certification for authority to offer  
13                  cable service under this section;

14                  “(H) a declaration by the person or group  
15                  that the person or group will comply with the  
16                  rights-of-way requirements of the franchising  
17                  authority in accordance with subsection (f); and

18                  “(I) a declaration by the person or group  
19                  that—

20                         “(i) the person or group will comply  
21                         with all Commission consumer protection  
22                         and customer service rules under section  
23                         632(b) (including the rules adopted under  
24                         section 632(b) pursuant to subsection (g)  
25                         of this section); and

1           “(ii) the person or group agrees that  
2           such standards may be enforced by the  
3           Commission or by the franchising author-  
4           ity in accordance with subsection (g) of  
5           this section.

6           “(4) LOCAL NOTIFICATION; PRESERVATION OF  
7           OPPORTUNITY TO NEGOTIATE.—

8           “(A) COPY TO FRANCHISING AUTHOR-  
9           ITY.—On the day of filing any certification  
10          under paragraph (2)(A) or (B) for a franchise  
11          area, the person or group shall transmit a copy  
12          of such certification to the franchising authority  
13          for such area.

14          “(B) NEGOTIATED FRANCHISE AGREE-  
15          MENTS PERMITTED.—Nothing in this section  
16          shall prevent a person or group from negoti-  
17          ating a franchise agreement or any other au-  
18          thority to provide cable service in a franchise  
19          area under section 621 or any other law. Upon  
20          entry into any such negotiated franchise agree-  
21          ment, such negotiated franchise agreement shall  
22          apply in lieu of any national franchise held by  
23          that person or group under this section for such  
24          franchise area.

1           “(5) UPDATING OF CERTIFICATIONS.—A person  
2 or group with a certification under this section shall  
3 update any information contained in such certifi-  
4 cation that is no longer accurate and correct.

5           “(6) PUBLIC AVAILABILITY OF CERTIFI-  
6 CATIONS.—The Commission shall provide for the  
7 public availability on the Commission’s Internet  
8 website or other electronic facility of all current cer-  
9 tifications filed under this section.

10          “(b) EFFECTIVENESS; DURATION.—

11           “(1) EFFECTIVENESS.—A national franchise  
12 under this section shall be effective with respect to  
13 any franchise area 30 days after the date of the fil-  
14 ing of a completed certification under subsection  
15 (a)(2)(A) or (B) that applies to such franchise area.

16           “(2) DURATION.—

17           “(A) IN GENERAL.—A franchise under this  
18 section that applies to a franchise area shall be  
19 effective for that franchise area for a term of  
20 10 years.

21           “(B) RENEWAL.—A franchise under this  
22 section for a franchise area shall be renewed  
23 automatically upon expiration of the 10-year  
24 period described in subparagraph (A).

1           “(C) PUBLIC HEARING.—At the request of  
2 a franchising authority in a franchise area, a  
3 cable operator authorized under this section to  
4 provide cable service in such franchise area  
5 shall, within the last year of the 10-year period  
6 applicable under subparagraph (A) to the cable  
7 operator’s franchise for such franchise area,  
8 participate in a public hearing on the cable op-  
9 erator’s performance in the franchise area, in-  
10 cluding the cable operator’s compliance with the  
11 requirements of this title. The hearing shall af-  
12 ford the public the opportunity to participate  
13 for the purpose of identifying cable-related com-  
14 munity needs and interests and assessing the  
15 operator’s performance. The cable operator  
16 shall provide notice to its subscribers of the  
17 hearing at least 30 days prior to the hearing.  
18 The Commission shall by rule specify the meth-  
19 ods by which a franchising authority shall no-  
20 tify a cable operator of the hearing for which its  
21 participation is required under this subpara-  
22 graph.

23           “(D) REVOCATION.—A franchise under  
24 this section for a franchise area may be revoked  
25 by the Commission—

1           “(i) for willful or repeated violation of  
2           any Federal or State law, or any Commis-  
3           sion regulation, relating to the provision of  
4           cable service in such franchise area;

5           “(ii) for false statements or material  
6           omissions knowingly made in any filing  
7           with the Commission relating to the provi-  
8           sion of cable service in such franchise area;

9           “(iii) for willful or repeated violation  
10          of the rights-of-way management laws or  
11          regulations of any franchising authority in  
12          such franchise area relating to the provi-  
13          sion of cable service in such franchise area;  
14          or

15          “(iv) for willful or repeated violation  
16          of the antidiscrimination requirement of  
17          subsection (h) with respect to such fran-  
18          chise area.

19          “(E) NOTICE.—The Commission shall  
20          send a notice of such revocation to each fran-  
21          chising authority with jurisdiction over the  
22          franchise areas for which the cable operator’s  
23          franchise was revoked.

24          “(F) REINSTATEMENT.—After a revoca-  
25          tion under subparagraph (D) of a franchise for

1 a franchise area of any person or group , the  
2 Commission may refuse to accept for filing a  
3 new certification for authority of such person or  
4 group to provide cable service under this section  
5 in such franchise area until the Commission de-  
6 termines that the basis of such revocation has  
7 been remedied.

8 “(G) RETURN TO LOCAL FRANCHISING IF  
9 CABLE COMPETITION CEASES.—

10 “(i) If only one cable operator is pro-  
11 viding cable service in a franchise area,  
12 and that cable operator obtained a national  
13 franchise for such franchise area under  
14 subsection (d)(2), the franchising authority  
15 for such franchise area may file a petition  
16 with the Commission requesting that the  
17 Commission terminate such national fran-  
18 chise for such franchise area.

19 “(ii) The Commission shall provide  
20 public notice and opportunity to comment  
21 on such petition. If it finds that the re-  
22 quirements of clause (i) are satisfied, the  
23 Commission shall issue an order granting  
24 such petition. Such order shall take effect  
25 one year from the date of such grant, if no

1           other cable operator offers cable service in  
2           such area during that one year. If another  
3           cable operator does offer cable service in  
4           such franchise area during that one year,  
5           the Commission shall rescind such order  
6           and dismiss such petition.

7           “(iii) A cable operator whose national  
8           franchise is terminated for such franchise  
9           area under this subparagraph may obtain  
10          new authority to provide cable service in  
11          such franchise area under this section, sec-  
12          tion 621, or any other law, if and when eli-  
13          gible.

14          “(c) REQUIREMENTS OF NATIONAL FRANCHISE.—A  
15          national franchise shall contain the following require-  
16          ments:

17                 “(1) FRANCHISE FEE.—A cable operator au-  
18                 thorized under this section to provide cable service  
19                 in a franchise area shall pay to the franchising au-  
20                 thority in such franchise area a franchise fee of up  
21                 to 5 percent (as determined by the franchising au-  
22                 thority) of such cable operator’s gross revenues from  
23                 the provision of cable service under this section in  
24                 such franchise area. Such payment shall be assessed  
25                 and collected in a manner consistent with section

1 622 and the definitions of gross revenues and fran-  
2 chise fee in this section.

3 “(2) PEG/I-NET REQUIREMENTS.—A cable op-  
4 erator authorized under this section to provide cable  
5 service in a franchise area shall comply with the re-  
6 quirements of subsection (e).

7 “(3) RIGHTS-OF-WAY.—A cable operator au-  
8 thorized under this section to provide cable service  
9 in a franchise area shall comply with the rights-of-  
10 way requirements of the franchising authority under  
11 subsection (f).

12 “(4) CONSUMER PROTECTION AND CUSTOMER  
13 SERVICE STANDARDS.—A cable operator authorized  
14 under this section to provide cable service in a fran-  
15 chise area shall comply with the consumer protection  
16 and customer service standards established by the  
17 Commission under section 632(b).

18 “(5) CHILD PORNOGRAPHY.—A cable operator  
19 authorized under this section to provide cable service  
20 in a franchise area shall comply with the regulations  
21 on child pornography promulgated pursuant to sub-  
22 section (i).

23 “(d) ELIGIBILITY FOR NATIONAL FRANCHISES.—  
24 The following persons or groups are eligible to obtain a  
25 national franchise under this section:

1           “(1) COMMENCEMENT OF SERVICE AFTER EN-  
2           ACTMENT.—A person or group that is not providing  
3           cable service in a franchise area on the date of en-  
4           actment of this section under section 621 or any  
5           other law may obtain a national franchise under this  
6           section to provide cable service in such franchise  
7           area.

8           “(2) EXISTING PROVIDERS OF CABLE SERV-  
9           ICE.—A person or group that is providing cable  
10          service in a franchise area on the date of enactment  
11          of this section under section 621 or any other law  
12          may obtain a franchise under this section to provide  
13          cable service in such franchise area if, on the date  
14          that the national franchise becomes effective, an-  
15          other person or group is providing cable service  
16          under this section, section 621, or any other law in  
17          such franchise area.

18          “(e) PUBLIC, EDUCATIONAL, AND GOVERNMENTAL  
19          USE.—

20                 “(1) IN GENERAL.—Subject to paragraph (3), a  
21                 cable operator with a national franchise for a fran-  
22                 chise area under this section shall provide channel  
23                 capacity for public, educational, and governmental  
24                 use that is not less than the channel capacity re-  
25                 quired of the cable operator with the most sub-

1       scribers in such franchise area on the effective date  
2       of such national franchise. If there is no other cable  
3       operator in such franchise area on the effective date  
4       of such national franchise, or there is no other cable  
5       operator in such franchise area on such date that is  
6       required to provide channel capacity for public, edu-  
7       cational, and governmental use, the cable operator  
8       shall provide the amount of channel capacity for  
9       such use as determined by Commission rule.

10       “(2) PEG AND I-NET FINANCIAL SUPPORT.—A  
11       cable operator with a national franchise under this  
12       section for a franchise area shall pay an amount  
13       equal to 1 percent of the cable operator’s gross reve-  
14       nues (as such term is defined in this section) in the  
15       franchise area to the franchising authority for the  
16       support of public, educational, and governmental use  
17       and institutional networks (as such term is defined  
18       in section 611(f)). Such payment shall be assessed  
19       and collected in a manner consistent with section  
20       622, including the authority of the cable operator to  
21       designate that portion of a subscriber’s bill attrib-  
22       utable to such payment. A cable operator that pro-  
23       vided cable service in a franchise area on the date  
24       of enactment of this section and that obtains a na-  
25       tional franchise under this section shall continue to

1 provide any institutional network that it was re-  
 2 quired to provide on the day before its national fran-  
 3 chise became effective in such franchise area under  
 4 section 621 or any other law. Notwithstanding sec-  
 5 tion 621(b)(3)(D), a franchising authority may not  
 6 require a cable operator franchised under this sec-  
 7 tion to construct a new institutional network.

8 “(3) ADJUSTMENT.—Every 10 years after the  
 9 commencement of a franchise under this section for  
 10 a franchise area, a franchising authority may require  
 11 a cable operator authorized under such franchise to  
 12 increase the channel capacity designated for public,  
 13 educational, or governmental use, and the channel  
 14 capacity designated for such use on any institutional  
 15 networks required under paragraph (2). Such in-  
 16 crease shall not exceed the higher of—

17 “(A) one channel; or

18 “(B) 10 percent of the public, educational,  
 19 or governmental channel capacity required of  
 20 that operator prior to the increase.

21 “(4) TRANSMISSION AND PRODUCTION OF PRO-  
 22 GRAMMING.—

23 “(A) A cable operator franchised under  
 24 this section shall ensure that any public, edu-  
 25 cational, or governmental programming carried

1 by the cable operator under this section within  
2 a franchise area is available to all of its sub-  
3 scribers in such franchise area.

4 “(B) The production of any programming  
5 provided under this subsection shall be the re-  
6 sponsibility of the franchising authority.

7 “(C) A cable operator franchised under  
8 this section shall be responsible for the trans-  
9 mission from the signal origination point (or  
10 points) of the programming, or from the point  
11 of interconnection with another cable operator  
12 under subparagraph (D), to the cable operator’s  
13 subscribers, of any public, educational, or gov-  
14 ernmental programming produced by or for the  
15 franchising authority and carried by the cable  
16 operator pursuant to this section.

17 “(D) Unless two cable operators otherwise  
18 agree to the terms for interconnection and cost  
19 sharing, such cable operators shall, if at least  
20 one of the operators is providing cable service  
21 in the franchise area pursuant to a franchise  
22 under this section, comply with regulations pre-  
23 scribed by the Commission providing for—

24 “(i) the interconnection between two  
25 cable operators in a franchise area for

1 transmission of public, educational, or gov-  
 2 ernmental programming, without material  
 3 deterioration in signal quality or  
 4 functionality; and

5 “(ii) the reasonable allocation of the  
 6 costs of such interconnection between such  
 7 cable operators.

8 “(E) A cable operator shall display the  
 9 program information for public, educational, or  
 10 governmental programming carried under this  
 11 subsection in any print or electronic program  
 12 guide in the same manner in which it displays  
 13 program information for other video program-  
 14 ming in the franchise area. The cable operator  
 15 shall not omit such public, educational, or gov-  
 16 ernmental programming from any navigational  
 17 device, guide, or menu containing other video  
 18 programming that is available to subscribers in  
 19 the franchise area.

20 “(f) RIGHTS-OF-WAY.—

21 “(1) AUTHORITY TO USE.—Any franchise under  
 22 this section for a franchise area shall be construed  
 23 to authorize the construction of a cable system over  
 24 public rights-of-way, and through easements, which  
 25 is within the area to be served by the cable system

1 and which have been dedicated for compatible uses,  
2 except that in using such easements the cable oper-  
3 ator shall ensure that—

4 “(A) the safety, functioning, and appear-  
5 ance of the property and the convenience and  
6 the safety of other persons not be adversely af-  
7 fected by the installation or construction of fa-  
8 cilities necessary for a cable system;

9 “(B) the cost of the installation, construc-  
10 tion, operation, or removal of such facilities be  
11 borne by the cable operator or subscriber, or a  
12 combination of both; and

13 “(C) the owner of the property be justly  
14 compensated by the cable operator for any dam-  
15 ages caused by the installation, construction,  
16 operation, or removal of such facilities by the  
17 cable operator.

18 “(2) MANAGEMENT OF PUBLIC RIGHTS-OF-  
19 WAY.—Nothing in this section affects the authority  
20 of a State or local government (including a fran-  
21 chising authority) over a person or group in their ca-  
22 pacity as a cable operator with a franchise under  
23 this section to manage, on a reasonable, competi-  
24 tively neutral, and non-discriminatory basis, the pub-  
25 lic rights-of-way, and easements that have been dedi-

1 cated for compatible uses. A State or local govern-  
2 ment (including a franchising authority) may, on a  
3 reasonable, competitively neutral, and non-discrimi-  
4 natory basis—

5 “(A) impose charges for such management;

6 and

7 “(B) require compliance with such man-  
8 agement, such charges, and paragraphs (1)(A),  
9 (B), and (C).

10 “(g) CONSUMER PROTECTION AND CUSTOMER SERV-  
11 ICE.—

12 “(1) NATIONAL STANDARDS.—Notwithstanding  
13 section 632(d), no State or local law (including any  
14 regulation) shall impose on a cable operator fran-  
15 chised under this section any consumer protection or  
16 customer service requirements other than consumer  
17 protection or customer service requirements of gen-  
18 eral applicability.

19 “(2) PROCEEDING.—Within 120 days after the  
20 date of enactment of this section, the Commission  
21 shall issue a report and order that updates for cable  
22 operators franchised under this section the national  
23 consumer protection and customer service rules  
24 under section 632(b), taking into consideration the  
25 national nature of a franchise under this section and

1 the role of State and local governments in enforcing,  
2 but not creating, consumer protection and customer  
3 service standards for cable operators franchised  
4 under this section.

5 “(3) REQUIREMENTS OF NEW RULES.—

6 “(A) Such rules shall, in addition to the  
7 requirements of section 632(b), address, with  
8 specificity, no less than the following consumer  
9 protection and customer service issues:

10 “(i) Billing, billing disputes, and dis-  
11 continuation of service, including when and  
12 how any late fees may be assessed (but not  
13 the amount of such fees).

14 “(ii) Loss of service or service quality.

15 “(iii) Changes in channel lineups or  
16 other cable services and features.

17 “(iv) Availability of parental control  
18 options.

19 “(B) The Commission’s revised consumer  
20 protection rules shall provide for forfeiture pen-  
21 alties, or customer rebates, refunds or credits,  
22 or both, and shall establish forfeiture, rebate,  
23 refund, and credit guidelines with respect to  
24 violations of such rules. Such guidelines shall—

1           “(i) provide for increased forfeiture  
2 penalties for repeated violations of the  
3 standards in such rules; and

4           “(ii) establish procedures by which  
5 any forfeiture penalty assessed by the  
6 Commission under this subsection shall be  
7 paid by the cable operator directly to the  
8 franchising authority affected by the viola-  
9 tion.

10           “(4) COMPLAINTS.—

11           “(A) IN GENERAL.—Any person may file a  
12 complaint with respect to an alleged violation of  
13 the Commission’s revised consumer protection  
14 rules in a franchise area by a cable operator  
15 franchised under this section—

16           “(i) with the franchising authority in  
17 such area; or

18           “(ii) with the Commission.

19           “(B) LOCAL FRANCHISING AUTHORITY  
20 PROCEDURE.—On its own motion or at the re-  
21 quest of any person, a franchising authority for  
22 a franchise area may—

23           “(i) initiate its own complaint pro-  
24 ceeding with respect to such an alleged vio-  
25 lation; or

1                   “(ii) file a complaint with the Com-  
2                   mission regarding such an alleged viola-  
3                   tion.

4                   “(C) TIMING.—The Commission or the  
5                   franchising authority conducting a proceeding  
6                   under this paragraph shall render a decision on  
7                   any complaint filed under this paragraph within  
8                   90 days of its filing.

9                   “(5) LOCAL FRANCHISING ORDERS.—

10                   “(A) REQUIRING COMPLIANCE.—In a pro-  
11                   ceeding commenced by a franchising authority,  
12                   a franchising authority may issue an order re-  
13                   quiring compliance with the Commission’s re-  
14                   vised consumer protection rules, but a fran-  
15                   chising authority may not create any new  
16                   standard or regulation, or expand upon or mod-  
17                   ify the Commission’s revised consumer protec-  
18                   tion rules.

19                   “(B) ACCESS TO RECORDS.—In such a  
20                   proceeding, the franchising authority may issue  
21                   an order requiring the filing of any data, docu-  
22                   ments, or records (including any contract,  
23                   agreement, or arrangement between the sub-  
24                   scriber and the cable operator) that are directly  
25                   related to the alleged violation.

1           “(C) COST OF FRANCHISING AUTHORITY  
2           ORDERS.—A franchising authority may charge  
3           a cable operator franchised under this section a  
4           nominal fee to cover the costs of issuing orders  
5           under this paragraph.

6           “(6) COMMISSION REMEDIES; APPEALS.—

7           “(A) REMEDIES.—An order of a fran-  
8           chising authority under this subsection shall be  
9           enforced by the Commission under this Act if—

10           “(i) the order is not appealed to the  
11           Commission;

12           “(ii) the Commission does not agree  
13           to grant review during the 30-day period  
14           described in subparagraph (B); or

15           “(iii) the order is sustained on appeal  
16           by the Commission.

17           “(B) APPEALS.—Any party may file a no-  
18           tice of appeal of an order of a franchising au-  
19           thority under this subsection with the Commis-  
20           sion, and shall transmit a copy of such notice  
21           to the other parties to the franchising authority  
22           proceeding. Such appeal shall be deemed denied  
23           at the end of the 30-day period beginning on  
24           the date of the filing unless the Commission

1 agrees within such period to grant review of the  
2 appeal.

3 “(C) TIMING.—After the filing of a notice  
4 of appeal under subparagraph (B), if such no-  
5 tice is not denied by operation of such subpara-  
6 graph, the Commission shall render a decision  
7 within 90 days of such filing.

8 “(7) ANNUAL REPORT.—

9 “(A) IN GENERAL.—Not later than 1 year  
10 after the date of enactment of this section, and  
11 annually thereafter, the Commission shall sub-  
12 mit a report to the Committee on Energy and  
13 Commerce of the House of Representatives and  
14 the Committee on Commerce, Science, and  
15 Transportation of the Senate on the implemen-  
16 tation of this subsection, including the fol-  
17 lowing:

18 “(i) The number of complaints filed  
19 with franchising authorities under clause  
20 (4)(A)(i).

21 “(ii) Any trends concerning com-  
22 plaints, such as increases in the number of  
23 particular types of complaints or in new  
24 types of complaints.

1           “(iii) The timeliness of the response  
2           of such franchising authorities and the re-  
3           sults of the complaints filed with such  
4           franchising authorities, if not appealed to  
5           the Commission.

6           “(iv) The number of complaints filed  
7           with the Commission under clause  
8           (4)(A)(ii).

9           “(v) The number of appeals filed with  
10          the Commission under paragraph (6)(B)  
11          and the number of such appeals which the  
12          Commission agreed to hear.

13          “(vi) The timeliness of the Commis-  
14          sion’s responses to such complaints and  
15          appeals.

16          “(vii) The results of such complaints  
17          and appeals filed with the Commission.

18          “(B) SUBMISSION OF INFORMATION BY  
19          FRANCHISING AUTHORITIES.—The Commission  
20          may request franchising authorities to submit  
21          information about the complaints filed with the  
22          franchising authorities under subparagraph  
23          (4)(A)(i), including the number of such com-  
24          plaints and the timeliness of the response and  
25          the results of such complaints.

1           “(8) DEFINITION.—For purposes of this sub-  
2 section, the term ‘Commission’s revised consumer  
3 protection rules’ means the national consumer pro-  
4 tection and customer service rules under section  
5 632(b) as revised by the Commission pursuant to  
6 paragraph (2) of this subsection.

7           “(h) ANTIDISCRIMINATION.—

8           “(1) PROHIBITION.—A cable operator with a  
9 national franchise under this section to provide cable  
10 service in a franchise area shall not deny access to  
11 its cable service to any group of potential residential  
12 cable service subscribers in such franchise area be-  
13 cause of the income of that group.

14           “(2) ENFORCEMENT.—

15           “(A) COMPLAINT.—If a franchising au-  
16 thority in a franchise area has reasonable cause  
17 to believe that a cable operator is in violation  
18 of this subsection with respect to such franchise  
19 area, the franchising authority may, after com-  
20 plying with subparagraph (B), file a complaint  
21 with the Commission alleging such violation.

22           “(B) NOTICE BY FRANCHISING AUTHOR-  
23 ITY.—Before filing a complaint with the Com-  
24 mission under subparagraph (A), a franchising  
25 authority—

1           “(i) shall give notice of each alleged  
2 violation to the cable operator;

3           “(ii) shall provide a period of not less  
4 than 30 days for the cable operator to re-  
5 spond to such allegations; and

6           “(iii) during such period, may require  
7 the cable operator to submit a written re-  
8 sponse stating the reasons why the oper-  
9 ator has not violated this subsection.

10          “(C) BIENNIAL REPORT.—A cable oper-  
11 ator with a national franchise under this section  
12 for a franchise area, not later than 180 days  
13 after the effective date of such national fran-  
14 chise, and biennially thereafter, shall submit a  
15 report to the Commission and the franchising  
16 authority in the franchise area—

17           “(i) identifying the geographic areas  
18 in the franchise area where the cable oper-  
19 ator offers cable service; and

20           “(ii) describing the cable operator’s  
21 progress in extending cable service to other  
22 areas in the franchise area.

23          “(D) NOTICE BY COMMISSION.—Upon re-  
24 ceipt of a complaint under this paragraph alleg-  
25 ing a violation of this subsection by a cable op-

1 erator, the Commission shall give notice of the  
2 complaint to the cable operator.

3 “(E) INVESTIGATION.—In investigating a  
4 complaint under this paragraph, the Commis-  
5 sion may require a cable operator to disclose to  
6 the Commission such information and docu-  
7 ments as the Commission deems necessary to  
8 determine whether the cable operator is in com-  
9 pliance with this subsection. The Commission  
10 shall maintain the confidentiality of any infor-  
11 mation or document collected under this sub-  
12 paragraph.

13 “(F) DEADLINE FOR RESOLUTION OF  
14 COMPLAINTS.—Not more than 60 days after  
15 the Commission receives a complaint under this  
16 paragraph, the Commission shall issue a deter-  
17 mination with respect to each violation alleged  
18 in the complaint.

19 “(G) DETERMINATION.—If the Commis-  
20 sion determines (in response to a complaint  
21 under this paragraph or on its own initiative)  
22 that a cable operator with a franchise under  
23 this section to provide cable service in a fran-  
24 chise area has denied access to its cable service  
25 to a group of potential residential cable service

1 subscribers in such franchise area because of  
2 the income of that group, the Commission shall  
3 ensure that the cable operator extends access to  
4 that group within a reasonable period of time.

5 “(H) REMEDIES.—

6 “(i) IN GENERAL.—This subsection  
7 shall be enforced by the Commission under  
8 titles IV and V.

9 “(ii) MAXIMUM FORFEITURE PEN-  
10 ALTY.—For purposes of section 503, the  
11 maximum forfeiture penalty applicable to a  
12 violation of this subsection shall be  
13 \$750,000 for each day of the violation.

14 “(iii) PAYMENT OF PENALTIES TO  
15 FRANCHISING AUTHORITY.—The Commis-  
16 sion shall order any cable operator subject  
17 to a forfeiture penalty under this sub-  
18 section to pay the penalty directly to the  
19 franchising authority involved.

20 “(i) CHILD PORNOGRAPHY.—Not later than 180  
21 days after the date of enactment of this section, the Com-  
22 mission shall promulgate regulations to require a cable op-  
23 erator with a national franchise under this section to pre-  
24 vent the distribution of child pornography (as such term  
25 is defined in section 254(h)(7)(F)) over its network.

1       “(j) LEASED ACCESS.—The provisions of section  
2 612(i) regarding the carriage of programming from a  
3 qualified minority programming source or from any quali-  
4 fied educational programming source shall apply to a cable  
5 operator franchised under this section to provide cable  
6 service in a franchise area.

7       “(k) APPLICABILITY OF OTHER PROVISIONS.—The  
8 provisions of this title that apply to a cable operator shall  
9 apply in a franchise area to a person or group with a na-  
10 tional franchise under this section to provide cable service  
11 in such franchise area, except that the following sections  
12 shall not apply in a franchise area to a person or group  
13 franchised under this section in such franchise area, or  
14 confer any authority to regulate or impose obligations on  
15 such person or group in such franchise area: Sections  
16 611(a), 611(b), 611(c), 613(a), 617, 621 (other than sub-  
17 sections (b)(3)(A), (b)(3)(B), (b)(3)(C), and (c)), 624(b),  
18 624(e), 624(h), 625, 626, 627, and 632(a).

19       “(l) EMERGENCY ALERTS.—Nothing in this section  
20 shall be construed to prohibit a State or local government  
21 from accessing the emergency alert system of a cable oper-  
22 ator with a franchise under this section in the area served  
23 by the State or local government to transmit local or re-  
24 gional emergency alerts.

25       “(m) REPORTING, RECORDS, AND AUDITS.—

1           “(1) REPORTING.—A cable operator with a  
2 franchise under this section to provide cable service  
3 in a franchise area shall make such periodic reports  
4 to the Commission and the franchising authority for  
5 such franchise area as the Commission may require  
6 to verify compliance with the fee obligations of sub-  
7 sections (c)(1) and (c)(2).

8           “(2) AVAILABILITY OF BOOKS AND RECORDS.—  
9 Upon request under paragraph (3) by a franchising  
10 authority for a franchise area, and upon request by  
11 the Commission, a cable operator with a national  
12 franchise for such franchise area shall make avail-  
13 able its books and records to periodic audit by such  
14 franchising authority or the Commission, respec-  
15 tively.

16           “(3) FRANCHISING AUTHORITY AUDIT PROCE-  
17 DURE.—A franchising authority may, upon reason-  
18 able written request, but no more than once in any  
19 12-month period, review the business records of such  
20 cable operator to the extent reasonably necessary to  
21 ensure payment of the fees required by subsections  
22 (c)(1) and (c)(2). Such review may include the meth-  
23 odology used by such cable operator to assign por-  
24 tions of the revenue from cable service that may be  
25 bundled or functionally integrated with other serv-

1 ices, capabilities, or applications. Such review shall  
2 be conducted in accordance with procedures estab-  
3 lished by the Commission.

4 “(4) COST RECOVERY.—

5 “(A) To the extent that the review under  
6 paragraph (3) identifies an underpayment of an  
7 amount meeting the minimum percentage speci-  
8 fied in subparagraph (B) of the fee required  
9 under subsection (c)(1) or (e)(2) for the period  
10 of review, the cable operator shall reimburse the  
11 franchising authority the reasonable costs of  
12 any such review conducted by an independent  
13 third party, as determined by the Commission,  
14 with respect to such fee. The costs of any con-  
15 tingency fee arrangement between the fran-  
16 chising authority and the independent reviewer  
17 shall not be subject to reimbursement.

18 “(B) The Commission shall determine by  
19 rule the minimum percentage underpayment  
20 that requires cost reimbursement under sub-  
21 paragraph (A).

22 “(5) LIMITATION.—Any fee that is not reviewed  
23 by a franchising authority within 3 years after it is  
24 paid or remitted shall not be subject to later review  
25 by the franchising authority under this subsection

1 and shall be deemed accepted in full payment by the  
2 franchising authority.

3 “(6) FEE DISPUTE RESOLUTION.—

4 “(A) COMPLAINT.—A franchising author-  
5 ity or a cable operator may file a complaint at  
6 the Commission to resolve a dispute between  
7 such authority and operator with respect to the  
8 amount of any fee required under subsection  
9 (c)(1) or (e)(2) if—

10 “(i) the franchising authority or the  
11 cable operator provides the other entity  
12 written notice of such dispute; and

13 “(ii) the franchising authority and the  
14 cable operator have not resolved the dis-  
15 pute within 90 calendar days after receipt  
16 of such notice.

17 “(B) MEETINGS.—Within 30 calendar  
18 days after receipt of notice of a dispute pro-  
19 vided pursuant to subparagraph (A)(i), rep-  
20 resentatives of the franchising authority and  
21 the cable operator, with authority to resolve the  
22 dispute, shall meet to attempt to resolve the  
23 dispute.

24 “(C) LIMITATION.—A complaint under  
25 subparagraph (A) shall be filed not later than

1           3 years after the end of the period to which the  
2           disputed amount relates, unless such time is ex-  
3           tended by written agreement between the fran-  
4           chising authority and cable operator.

5           “(D) RESOLUTION.—The Commission  
6           shall issue an order resolving any complaint  
7           filed under subparagraph (A) within 90 days of  
8           filing.

9           “(n) ACCESS TO PROGRAMMING FOR SHARED FA-  
10          CILITIES.—

11           “(1) PROHIBITION.—A cable programming ven-  
12          dor in which a cable operator has an attributable in-  
13          terest shall not deny a cable operator with a national  
14          franchise under this section access to video program-  
15          ming solely because such cable operator with a na-  
16          tional franchise uses a headend for its cable system  
17          that is also used, under a shared ownership or leas-  
18          ing agreement, as the headend for another cable sys-  
19          tem.

20           “(2) DEFINITION.—The term ‘cable program-  
21          ming vendor’ means a person engaged in the produc-  
22          tion, creation, or wholesale distribution for sale of  
23          video programming which is primarily intended for  
24          the direct receipt by cable operators for their re-  
25          transmission to cable subscribers.

1       “(o) GROSS REVENUES.—As used in this section:

2               “(1) IN GENERAL.—Subject to paragraphs (2)  
3 and (3), the term ‘gross revenues’ means all consid-  
4 eration of any kind or nature, including cash, cred-  
5 its, property, and in-kind contributions (services or  
6 goods) received by the cable operator from the provi-  
7 sion of cable service within the franchise area.

8               “(2) INCLUDED ITEMS.—Subject to paragraph  
9 (3), the term ‘gross revenues’ shall include the fol-  
10 lowing:

11                       “(A) all charges and fees paid by sub-  
12 scribers for the provision of cable service, in-  
13 cluding fees attributable to cable service when  
14 sold individually or as part of a package or bun-  
15 dle, or functionally integrated, with services  
16 other than cable service;

17                       “(B) any franchise fee imposed on the  
18 cable operator that is passed on to subscribers;

19                       “(C) compensation received by the cable  
20 operator for promotion or exhibition of any  
21 products or services over the cable service, such  
22 as on ‘home shopping’ or similar programming;

23                       “(D) revenue received by the cable oper-  
24 ator as compensation for carriage of video pro-

1 programming or other programming service on  
2 that operator's cable service;

3 "(E) all revenue derived from the cable op-  
4 erator's cable service pursuant to compensation  
5 arrangements for advertising; and

6 "(F) any advertising commissions paid to  
7 an affiliated third party for cable services ad-  
8 vertising.

9 "(3) EXCLUDED ITEMS.—The term 'gross reve-  
10 nues' shall not include the following:

11 "(A) any revenue not actually received,  
12 even if billed, such as bad debt net of any re-  
13 coveries of bad debt;

14 "(B) refunds, rebates, credits, or discounts  
15 to subscribers or a municipality to the extent  
16 not already offset by subparagraph (A) and to  
17 the extent such refund, rebate, credit, or dis-  
18 count is attributable to the cable service;

19 "(C) subject to paragraph (4), any reve-  
20 nues received by the cable operator or its affili-  
21 ates from the provision of services or capabili-  
22 ties other than cable service, including tele-  
23 communications services, Internet access serv-  
24 ices, and services, capabilities, and applications  
25 that may be sold as part of a package or bun-

1           dle, or functionally integrated, with cable serv-  
2           ice;

3           “(D) any revenues received by the cable  
4           operator or its affiliates for the provision of di-  
5           rectory or Internet advertising, including yellow  
6           pages, white pages, banner advertisement, and  
7           electronic publishing;

8           “(E) any amounts attributable to the pro-  
9           vision of cable service to customers at no  
10          charge, including the provision of such service  
11          to public institutions without charge;

12          “(F) any tax, fee, or assessment of general  
13          applicability imposed on the customer or the  
14          transaction by a Federal, State, or local govern-  
15          ment or any other governmental entity, col-  
16          lected by the provider, and required to be remit-  
17          ted to the taxing entity, including sales and use  
18          taxes and utility user taxes;

19          “(G) any forgone revenue from the provi-  
20          sion of cable service at no charge to any person,  
21          except that any forgone revenue exchanged for  
22          trades, barter, services, or other items of value  
23          shall be included in gross revenue;

24          “(H) sales of capital assets or surplus  
25          equipment;

1           “(I) reimbursement by programmers of  
2           marketing costs actually incurred by the cable  
3           operator for the introduction of new program-  
4           ming; and

5           “(J) the sale of cable services for resale to  
6           the extent the purchaser certifies in writing  
7           that it will resell the service and pay a franchise  
8           fee with respect thereto.

9           “(4) FUNCTIONALLY INTEGRATED SERVICES.—  
10          In the case of a cable service that is bundled or inte-  
11          grated functionally with other services, capabilities,  
12          or applications, the portion of the cable operator’s  
13          revenue attributable to such other services, capabili-  
14          ties, or applications shall be included in gross rev-  
15          enue unless the cable operator can reasonably iden-  
16          tify the division or exclusion of such revenue from  
17          its books and records that are kept in the regular  
18          course of business.

19          “(5) AFFILIATE REVENUE.—Revenue of an af-  
20          filiate shall be included in the calculation of gross  
21          revenues to the extent the treatment of such revenue  
22          as revenue of the affiliate has the effect (whether in-  
23          tentional or unintentional) of evading the payment  
24          of franchise fees which would otherwise be paid for  
25          cable service.

1           “(6) AFFECT ON OTHER LAW.—Nothing in this  
2 section is intended to limit a franchising authority’s  
3 rights pursuant to section 622(h).

4           “(p) ADDITIONAL DEFINITIONS.—For purposes of  
5 this section:

6           “(1) CABLE OPERATOR.—The term ‘cable oper-  
7 ator’ has the meaning provided in section 602(5) ex-  
8 cept that such term also includes a person or group  
9 with a national franchise under this section.

10           “(2) FRANCHISE FEE.—

11           “(A) The term ‘franchise fee’ includes any  
12 fee or assessment of any kind imposed by a  
13 franchising authority or other governmental en-  
14 tity on a person or group providing cable serv-  
15 ice in a franchise area under this section, or on  
16 a subscriber of such person or group, or both,  
17 solely because of their status as such.

18           “(B) The term ‘franchise fee’ does not in-  
19 clude—

20           “(i) any tax, fee, or assessment of  
21 general applicability (including any such  
22 tax, fee, or assessment imposed on both  
23 utilities and a person or group providing  
24 cable service in a franchise area under this  
25 section (or the services of such person or

1 group) but not including a fee or assess-  
2 ment which is unduly discriminatory  
3 against such person or group or the sub-  
4 scribers of such person or group);

5 “(ii) any fee assessed under sub-  
6 section (e)(2) for support of public, edu-  
7 cational, and governmental use and institu-  
8 tional networks (as such term is defined in  
9 section 611(f));

10 “(iii) requirements or charges under  
11 subsection (f)(2) for the management of  
12 public rights-of-way, including payments  
13 for bonds, security funds, letters of credit,  
14 insurance, indemnification, penalties, or  
15 liquidated damages; or

16 “(iv) any fee imposed under title 17,  
17 United States Code.

18 “(3) INTERNET ACCESS SERVICE.—The term  
19 ‘Internet access service’ means a service that enables  
20 users to access content, information, electronic mail,  
21 or other services offered over the Internet.

22 “(4) UNIT OF GENERAL LOCAL GOVERN-  
23 MENT.—The term ‘unit of general local government’  
24 means—

1           “(A) a county, township, city, or political  
2           subdivision of a county, township, or city;

3           “(B) the District of Columbia; or

4           “(C) the recognized governing body of an  
5           Indian tribe or Alaskan Native village that car-  
6           ries out substantial governmental duties and  
7           powers.”.

8           (b) IMPLEMENTING REGULATIONS.—The Federal  
9           Communications Commission shall prescribe regulations  
10          to implement the amendment made by subsection (a) with-  
11          in 120 days after the date of enactment of this Act.

12       **SEC. 102. DEFINITIONS.**

13          Section 602 of the Communications Act of 1934 (47  
14          U.S.C. 522) is amended—

15               (1) in paragraph (4), by inserting before the  
16               semicolon at the end the following: “, or its equiva-  
17               lent as determined by the Commission”;

18               (2) in paragraph (5)(A), by inserting “(regard-  
19               less of whether such person or group provides such  
20               service separately or combined with a telecommuni-  
21               cations service or information service)” after “over  
22               a cable system”;

23               (3) by striking paragraph (6) and inserting the  
24               following:

25               “(6) the term ‘cable service’ means—

1           “(A)(i) the one-way transmission to sub-  
 2           scribers of (I) video programming, or (II) other  
 3           programming service; and

4           “(ii) subscriber interaction, if any, which is  
 5           required for the selection or use of such video  
 6           programming or other programming service; or

7           “(B) the transmission to subscribers of  
 8           video programming or other programming serv-  
 9           ice provided through wireline facilities located  
 10          at least in part in the public rights-of-way,  
 11          without regard to delivery technology, including  
 12          Internet protocol technology, except to the ex-  
 13          tent that such video programming or other pro-  
 14          gramming service is provided as part of—

15                 “(i) a commercial mobile service (as  
 16                 such term is defined in section 332(d)); or

17                 “(ii) an Internet access service (as  
 18                 such term is defined in section 630(p));”;

19           (4) in paragraph (7)(D), by inserting after  
 20           “section 653 of this title” the following; “except in  
 21           a franchise area in which such system is used to  
 22           provide cable service under a national franchise pur-  
 23           suant to section 630”;

24           (5) in paragraph (9)—

25                 (A) by inserting “(A)” after “means”; and

1 (B) by inserting before the semicolon at  
2 the end the following: “; and (B) a national  
3 franchise that is effective under section 630 on  
4 the basis of a certification with the Commis-  
5 sion”; and

6 (6) in paragraph (10), by inserting before the  
7 semicolon at the end the following: “, but does not  
8 include the Commission with respect to a national  
9 franchise under section 630”.

10 **SEC. 103. MONITORING AND REPORTING.**

11 (a) **REPORT ON CABLE SERVICE DEPLOYMENT.**—

12 The Federal Communications Commission shall, com-  
13 mencing not later than one year after the date of enact-  
14 ment of this Act, issue a report annually on the deploy-  
15 ment of cable service pursuant to the amendments made  
16 by this title. In its report, the Commission shall describe  
17 in detail—

18 (1) with respect to deployment by new cable op-  
19 erators—

20 (A) the progress of deployment of such  
21 service within the telephone service area of  
22 cable operators, if the operator is also an in-  
23 cumbent local exchange carrier, including a  
24 comparison with the progress of deployment of

1 broadband services not defined as cable services  
2 within such telephone service area;

3 (B) the number of franchise areas in which  
4 such service is being deployed and offered;

5 (C) where such service is not being de-  
6 ployed and offered; and

7 (D) the number and locations of franchise  
8 areas in which the cable operator is serving only  
9 a portion of the franchise area, and the extent  
10 of such service within the franchise area;

11 (2) the number and locations of franchise areas  
12 in which a cable operator with a franchise under sec-  
13 tion 621 of the Communications Act of 1934 (47  
14 U.S.C. 541) on the date of enactment of this Act  
15 withdraws service from any portion of the franchise  
16 area for which it previously offered service, and the  
17 extent of such withdrawal of service within the fran-  
18 chise area;

19 (3) the rates generally charged for cable service;

20 (4) the rates charged by overlapping, competing  
21 multichannel video programming distributors and by  
22 competing cable operators for comparable service or  
23 cable service;

24 (5) the average household income of those fran-  
25 chise areas or portions of franchise areas where

1 cable services is being offered, and the average  
2 household income of those franchise areas, or por-  
3 tions of franchise areas, where cable service is not  
4 being offered;

5 (6) the proportion of rural households to urban  
6 households, as defined by the Bureau of the Census,  
7 in those franchise areas or portions of franchise  
8 areas where cable service is being offered, and the  
9 proportion of rural households to urban households  
10 in those franchise areas or portions of franchise  
11 areas where cable service is not being offered, in-  
12 cluding a State-by-State breakdown of such data  
13 and a comparison with the overall ratio of rural and  
14 urban households in each State; and

15 (7) a comparison of the services and rates in  
16 areas served by national franchisees under section  
17 630 of the Communications Act of 1934 (as added  
18 by section 101 of this Act) and the services and  
19 rates in other areas.

20 (b) CABLE OPERATOR REPORTS.—The Federal Com-  
21 munications Commission is authorized—

22 (1) to require cable operators to report to the  
23 Commission all of the information that the Commis-  
24 sion needs to compile the report required by this sec-  
25 tion; and

1           (2) to require cable operators to file the same  
2 information with the relevant franchising authorities  
3 and State commissions.

4 **SEC. 104. RULE OF CONSTRUCTION.**

5           Nothing in this Act or the amendments made by this  
6 Act shall affect the application or interpretation of section  
7 224 of the Communications Act of 1934 (47 U.S.C. 224).

8 **TITLE II—ENFORCEMENT OF**  
9 **BROADBAND POLICY STATE-**  
10 **MENT**

11 **SEC. 201. ENFORCEMENT OF BROADBAND POLICY STATE-**  
12 **MENT.**

13           Title VII of the Communications Act of 1934 (47  
14 U.S.C. 601 et seq.) is amended by adding at the end the  
15 following new section:

16 **“SEC. 715. ENFORCEMENT OF BROADBAND POLICY STATE-**  
17 **MENT.**

18           “(a) **AUTHORITY.**—The Commission shall have the  
19 authority to enforce the Commission’s broadband policy  
20 statement and the principles incorporated therein.

21           “(b) **ENFORCEMENT.**—

22           “(1) **IN GENERAL.**—This section shall be en-  
23 forced by the Commission under titles IV and V. A  
24 violation of the Commission’s broadband policy

1 statement or the principles incorporated therein  
2 shall be treated as a violation of this Act.

3 “(2) MAXIMUM FORFEITURE PENALTY.—For  
4 purposes of section 503, the maximum forfeiture  
5 penalty applicable to a violation described in para-  
6 graph (1) of this subsection shall be \$500,000 for  
7 each violation.

8 “(3) ADJUDICATORY AUTHORITY.—The Com-  
9 mission shall have exclusive authority to adjudicate  
10 any complaint alleging a violation of the broadband  
11 policy statement and the principles incorporated  
12 therein. The Commission shall complete an adjudica-  
13 tory proceeding under this subsection not later than  
14 90 days after receipt of the complaint. If, upon com-  
15 pletion of an adjudicatory proceeding pursuant to  
16 this section, the Commission determines that such a  
17 violation has occurred, the Commission shall have  
18 authority to adopt an order to require the entity  
19 subject to the complaint to comply with the  
20 broadband policy statement and the principles incor-  
21 porated therein. Such authority shall be in addition  
22 to the authority specified in paragraph (1) to en-  
23 force this section under titles IV and V. In addition,  
24 the Commission shall have authority to adopt proce-  
25 dures for the adjudication of complaints alleging a

1 violation of the broadband policy statement or prin-  
2 ciples incorporated therein.

3 “(4) LIMITATION.—Notwithstanding paragraph  
4 (1), the Commission’s authority to enforce the  
5 broadband policy statement and the principles incor-  
6 porated therein does not include authorization for  
7 the Commission to adopt or implement rules or reg-  
8 ulations regarding enforcement of the broadband  
9 policy statement and the principles incorporated  
10 therein, with the sole exception of the authority to  
11 adopt procedures for the adjudication of complaints,  
12 as provided in paragraph (3).

13 “(c) STUDY.—Within 180 days after the date of en-  
14 actment of this section, the Commission shall conduct, and  
15 submit to the House Committee on Energy and Commerce  
16 and the Senate Committee on Commerce, Science, and  
17 Transportation, a study regarding whether the objectives  
18 of the broadband policy statement and the principles in-  
19 corporated therein are being achieved.

20 “(d)(1) RULE OF CONSTRUCTION.—Nothing in this  
21 section shall be construed to modify, impair, or supersede  
22 the applicability of the antitrust laws or the jurisdiction  
23 of the district courts of the United States to hear claims  
24 arising under the antitrust laws.

1       “(2) DEFINITION OF ANTITRUST LAWS.—The term  
 2 ‘antitrust laws’ has the meaning given it in subsection (a)  
 3 of the first section of the Clayton Act (15 U.S.C. 12(a)),  
 4 except that such term includes section 5 of the Federal  
 5 Trade Commission Act (15 U.S.C. 45) to the extent that  
 6 such section 5 applies to unfair methods of competition.

7       “(e) DEFINITION.—For purposes of this section, the  
 8 term ‘Commission’s broadband policy statement’ means  
 9 the policy statement adopted on August 5, 2005, and  
 10 issued on September 23, 2005, In the Matters of Appro-  
 11 priate Framework for Broadband Access to the Internet  
 12 over Wireline Facilities, and other Matters (FCC 05–151;  
 13 CC Docket No. 02–33; CC Docket No. 01–337; CC Dock-  
 14 et Nos. 95–20, 98–10; GN Docket No. 00–185; CS Dock-  
 15 et No. 02–52).”.

## 16                   **TITLE III—VOIP/911**

### 17       **SEC. 301. EMERGENCY SERVICES; INTERCONNECTION.**

18       Title VII of the Communications Act of 1934 (47  
 19 U.S.C. 601 et seq.) is further amended by adding after  
 20 section 715 (as added by section 201 of this Act) the fol-  
 21 lowing new sections:

#### 22       **“SEC. 716. EMERGENCY SERVICES.**

23       “(a) 911 AND E–911 SERVICES.—

1           “(1) IN GENERAL.—Each VOIP service pro-  
2           vider has a duty to ensure that 911 and E-911 serv-  
3           ices are provided to subscribers of VOIP services.

4           “(2) USE OF EXISTING REGULATIONS.—A  
5           VOIP service provider that complies with the Com-  
6           mission’s regulations requiring providers of VOIP  
7           service to supply 911 and E911 capabilities to their  
8           customers (Report and Order in WC Docket Nos.  
9           04-36 and 05-196) and that are in effect on the  
10          date of enactment of this section shall be considered  
11          to be in compliance with the requirements of this  
12          section, other than subsection (c), until such regula-  
13          tions are modified or superseded by subsequent reg-  
14          ulations.

15          “(b) NON-DISCRIMINATORY ACCESS TO CAPABILI-  
16          TIES.—

17                 “(1) ACCESS.—Each incumbent local exchange  
18                 carrier (as such term is defined in section 251(h))  
19                 or government entity with ownership or control of  
20                 the necessary E-911 infrastructure shall provide any  
21                 requesting VOIP service provider with nondiscrim-  
22                 inatory access to such infrastructure. Such carrier  
23                 or entity shall provide access to the infrastructure at  
24                 just and reasonable, nondiscriminatory rates, terms,  
25                 and conditions. Such access shall be consistent with

1 industry standards established by the National  
2 Emergency Number Association or other applicable  
3 industry standards organizations.

4 “(2) ENFORCEMENT.—The Commission or a  
5 State commission may enforce the requirements of  
6 this subsection and the Commission’s regulations  
7 thereunder. A VOIP service provider may obtain ac-  
8 cess to such infrastructure pursuant to section 717  
9 by asserting the rights described in such section.

10 “(c) NEW CUSTOMERS.—A VOIP service provider  
11 shall make 911 service available to new customers within  
12 a reasonable time in accordance with the following require-  
13 ments:

14 “(1) CONNECTION TO SELECTIVE ROUTER.—  
15 For all new customers not within the geographic  
16 areas where a VOIP service provider can imme-  
17 diately provide 911 service to the geographically ap-  
18 propriate PSAP, a VOIP service provider, or its  
19 third party vendor, shall have no more than 30 days  
20 from the date the VOIP provider has acquired a cus-  
21 tomer to order service providing connectivity to the  
22 selective router so that 911 service, or E911 service  
23 where the PSAP is capable of receiving and proc-  
24 essing such information, can be provided through  
25 the selective router.

1           “(2) INTERIM SERVICE.—For all new customers  
2 not within the geographic areas where the VOIP  
3 service provider can immediately provide 911 service  
4 to the geographically appropriate PSAP, a VOIP  
5 service provider shall provide 911 service through—

6                   “(A) an arrangement mutually agreed to  
7 by the VOIP service provider and the PSAP or  
8 PSAP governing authority; or

9                   “(B) an emergency response center with  
10 national call routing capabilities.

11 Such service shall be provided 24 hours a day from  
12 the date a VOIP service provider has acquired a cus-  
13 tomer until the VOIP service provider can provide  
14 911 service to the geographically appropriate PSAP.

15           “(3) NOTICE.—Before providing service to any  
16 new customer not within the geographic areas where  
17 the VOIP service provider can immediately provide  
18 911 service to the geographically appropriate PSAP,  
19 a VOIP service provider shall provide such customer  
20 with clear notice that 911 service will be available  
21 only as described in paragraph (2).

22           “(4) RESTRICTION ON ACQUISITION OF NEW  
23 CUSTOMERS.—A VOIP service provider may not ac-  
24 quire new customers within a geographic area served  
25 by a selective router if, within 180 days of first ac-

1       quiring a new customer in the area served by the se-  
2       lective router, the VOIP service provider does not  
3       provide 911 service, or E911 service where the  
4       PSAP is capable of receiving and processing such in-  
5       formation, to the geographically appropriate PSAP  
6       for all existing customers served by the selective  
7       router.

8           “(5) ENFORCEMENT: NO FIRST WARNINGS.—  
9       Paragraph (5) of section 503(b) shall not apply to  
10       the assessment of forfeiture penalties for violations  
11       of this subsection or the regulations thereunder.

12       “(d) STATE AUTHORITY.—Nothing in this Act or any  
13       Commission regulation or order shall prevent the imposi-  
14       tion on or collection from a VOIP service provider, of any  
15       fee or charge specifically designated or presented as dedi-  
16       cated by a State, political subdivision thereof, or Indian  
17       tribe on an equitable, and non-discriminatory basis for the  
18       support of 911 and E-911 services if no portion of the  
19       revenue derived from such fee or charge is obligated or  
20       expended for any purpose other than support of 911 and  
21       E-911 services or enhancements of such services.

22       “(e) FEASIBILITY.—In establishing requirements or  
23       obligations under subsections (a) and (b), the Commission  
24       shall ensure that such standards impose requirements or  
25       obligations on VOIP service providers and entities with

1 ownership or control of necessary E-911 infrastructure  
2 that the Commission determines are technologically and  
3 operationally feasible. In determining the requirements  
4 and obligations that are technologically and operationally  
5 feasible, the Commission shall take into consideration  
6 available industry technological and operational standards.

7       “(f) PROGRESS REPORTS.—To the extent that the  
8 Commission concludes that it is not technologically or  
9 operationally feasible for VOIP service providers to comply  
10 with E-911 requirements or obligations, then the Com-  
11 mission shall submit reports to the Committee on Energy  
12 and Commerce of the House of Representatives and the  
13 Committee on Commerce, Science, and Transportation of  
14 the Senate on the progress in attaining and deploying E-  
15 911 service. Such reports shall be submitted semiannually  
16 until the Commission concludes that it is technologically  
17 and operationally feasible for all VOIP service providers  
18 to comply with E-911 requirements and obligations. Such  
19 reports may include any recommendations the Commission  
20 considers appropriate to encourage the migration of emer-  
21 gency services to TCP/IP protocol or other advanced serv-  
22 ices.

23       “(g) ACCESS TO INFORMATION.—The Commission  
24 shall have the authority to compile a list of PSAP contact  
25 information, testing procedures, and classes and types of

1 services supported by PSAPs, or other information con-  
2 cerning the necessary E-911 infrastructure, for the pur-  
3 pose of assisting providers in complying with the require-  
4 ments of this section.

5       “(h) EMERGENCY ROUTING NUMBER ADMINIS-  
6 TRATOR.—Within 30 days after the date of enactment of  
7 this section, the Federal Communications Commission  
8 shall establish an emergency routing number adminis-  
9 trator to enable VOIP service providers to acquire non-  
10 dialable pseudo-automatic number identification numbers  
11 for 9-1-1 routing purposes on a national scale. The Com-  
12 mission may adopt such rules and practices as are nec-  
13 essary to guide such administrator in the fair and expedi-  
14 tious assignment of these numbers.

15       “(i) EMERGENCY RESPONSE SYSTEMS.—

16               “(1) NOTICE PRIOR TO INSTALLATION OR NUM-  
17 BER ACTIVATION OF VOIP SERVICE.—Prior to instal-  
18 lation or number activation of VOIP service for a  
19 customer, a VOIP service provider shall provide  
20 clear and conspicuous notice to the customer that—

21                       “(A) such customer should arrange with  
22 his or her emergency response system provider,  
23 if any, to test such system after installation;

1           “(B) such customer should notify his or  
2 her emergency response system provider after  
3 VOIP service is installed; and

4           “(C) a battery backup is required for cus-  
5 tomer premises equipment installed in connec-  
6 tion with the VOIP service in order for the sig-  
7 naling of such system to function in the event  
8 of a power outage.

9           “(2) DEFINITION.—In this subsection:

10           “(A) The term ‘emergency response sys-  
11 tem’ means an alarm or security system, or per-  
12 sonal security or medical monitoring system,  
13 that is connected to an emergency response cen-  
14 ter by means of a telecommunications carrier or  
15 VOIP service provider.

16           “(B) The term ‘emergency response center’  
17 means an entity that monitors transmissions  
18 from an emergency response system.

19           “(j) MIGRATION TO IP-ENABLED EMERGENCY NET-  
20 WORK.—

21           “(1) NATIONAL REPORT.—No more than 18  
22 months after the date of the enactment of this sec-  
23 tion, the National 911 Implementation and Coordi-  
24 nation Office shall develop a report to Congress on  
25 migrating to a national IP-enabled emergency net-

1 work capable of receiving and responding to all cit-  
2 izen activated emergency communications.

3 “(2) CONTENTS OF REPORT.—The report re-  
4 quired by paragraph (1) shall—

5 “(A) outline the potential benefits of such  
6 a migration;

7 “(B) identify barriers that must be over-  
8 come and funding mechanisms to address those  
9 barriers;

10 “(C) include a proposed timetable, an out-  
11 line of costs and potential savings;

12 “(D) provide recommendations on specific  
13 legislative language,

14 “(E) provide recommendations on any leg-  
15 islative changes, including updating definitions,  
16 to facilitate a national IP-enabled emergency  
17 network; and

18 “(F) assess, collect, and analyze the expe-  
19 riences of the PSAPs and related public safety  
20 authorities who are conducting trial deploy-  
21 ments of IP-enabled emergency networks as of  
22 the date of enactment of this section.

23 “(3) CONSULTATION.—In developing the report  
24 required by paragraph (1), the Office shall consult  
25 with representatives of the public safety community,

1 technology and telecommunications providers, and  
2 others it deems appropriate.

3 “(k) IMPLEMENTATION.—

4 “(1) DEADLINE.—The Commission shall pre-  
5 scribe regulations to implement this section within  
6 120 days after the date of enactment of this section.

7 “(2) LIMITATION.—Nothing in this section  
8 shall be construed to permit the Commission to issue  
9 regulations that require or impose a specific tech-  
10 nology or technological standard.

11 “(l) DEFINITIONS.—For purposes of this section:

12 “(1) VOIP SERVICE.—The term ‘VOIP service’  
13 means a service that—

14 “(A) provides real-time 2-way voice com-  
15 munications transmitted through customer  
16 premises equipment using TCP/IP protocol, or  
17 a successor protocol (including when the voice  
18 communication is converted to or from TCP/IP  
19 protocol by the VOIP service provider and  
20 transmitted to the subscriber without use of cir-  
21 cuit switching), for a fee or without a fee;

22 “(B) is offered to the public, or such class-  
23 es of users as to be effectively available to the  
24 public (whether part of a bundle of services or  
25 separately); and

1           “(C) has the capability so that the service  
2           can originate traffic to, and terminate traffic  
3           from, the public switched telephone network.

4           “(2) VOIP SERVICE PROVIDER.—The term  
5           ‘VOIP service provider’ means any person who pro-  
6           vides or offers to provide a VOIP service.

7           “(3) NECESSARY E-911 INFRASTRUCTURE.—  
8           The term ‘necessary E-911 infrastructure’ means  
9           the originating trunks to the selective routers, selec-  
10          tive routers, databases (including automatic location  
11          information databases and master street address  
12          guides), trunks, or other related facilities necessary  
13          for the delivery and completion of 911 and E-911  
14          calls, or other 911 and E-911 equipment, facilities,  
15          databases, interfaces, and related capabilities speci-  
16          fied by the Commission.

17          “(4) NON-DIALABLE PSEUDO-AUTOMATIC NUM-  
18          BER IDENTIFICATION NUMBER.—The term ‘non-  
19          dialable pseudo-automatic number identification  
20          number’ means a number, consisting of the same  
21          number of digits as numbers used for automatic  
22          number identification, that is not a North American  
23          Numbering Plan telephone directory number and  
24          that may be used in place of an automatic number  
25          identification number to convey special meaning.

1 The special meaning assigned to the non-dialable  
2 pseudo-automatic number identification number is  
3 determined by nationally standard agreements, or by  
4 individual agreements, as necessary, between the  
5 system originating the call, intermediate systems  
6 handling and routing the call, and the destination  
7 system.

8 **“SEC. 717. RIGHTS AND OBLIGATIONS OF VOIP SERVICE**  
9 **PROVIDERS.**

10 “(a) IN GENERAL.—

11 “(1) FACILITIES-BASED VOIP SERVICE PRO-  
12 VIDERS.—A facilities-based VOIP service provider  
13 shall have the same rights, duties, and obligations as  
14 a requesting telecommunications carrier under sec-  
15 tions 251 and 252, if the provider elects to assert  
16 such rights.

17 “(2) VOIP SERVICE PROVIDERS.—A VOIP serv-  
18 ice provider that is not a facilities-based VOIP serv-  
19 ice provider shall have only the same rights, duties,  
20 and obligations as a requesting telecommunications  
21 carrier under sections 251(b), 251(e), and 252, if  
22 the provider elects to assert such rights.

23 “(3) CLARIFYING TREATMENT OF VOIP SERV-  
24 ICE.—A telecommunications carrier may use inter-  
25 connection, services, and network elements obtained

1       pursuant to sections 251 and 252 from an incum-  
2       bent local exchange carrier (as such term is defined  
3       in section 251(h)) to exchange VOIP service traffic  
4       with such incumbent local exchange carrier regard-  
5       less of the provider originating such VOIP service  
6       traffic, including an affiliate of such telecommuni-  
7       cations carrier.

8       “(b) DISABLED ACCESS.—A VOIP service provider  
9       or a manufacturer of VOIP service equipment shall have  
10      the same rights, duties, and obligations as a telecommuni-  
11      cations carrier or telecommunications equipment manufac-  
12      turer, respectively, under sections 225, 255, and 710 of  
13      the Act. Within 1 year after the date of enactment of this  
14      Act, the Commission, in consultation with the Architec-  
15      tural and Transportation Barriers Compliance Board,  
16      shall prescribe such regulations as are necessary to imple-  
17      ment this section. In implementing this subsection, the  
18      Commission shall consider whether a VOIP service pro-  
19      vider or manufacturer of VOIP service equipment pri-  
20      marily markets such service or equipment as a substitute  
21      for telecommunications service, telecommunications equip-  
22      ment, customer premises equipment, or telecommuni-  
23      cations relay services.

24      “(c) DEFINITIONS.—For purposes of this section:

1           “(1) FACILITIES-BASED VOIP SERVICE PRO-  
2           VIDER.—The term ‘facilities-based VOIP service  
3           provider’ means an entity that provides VOIP serv-  
4           ice over a physical facility that terminates at the end  
5           user’s location and which such entity or an affiliate  
6           owns or over which such entity or affiliate has exclu-  
7           sive use. An entity or affiliate shall be considered a  
8           facilities-based VOIP service provider only in those  
9           geographic areas where such terminating physical  
10          facilities are located.

11          “(2) VOIP SERVICE PROVIDER; VOIP SERVICE.—  
12          The terms ‘VOIP service provider’ and ‘VOIP serv-  
13          ice’ have the meanings given such terms by section  
14          716(l).”.

15 **SEC. 302. COMPENSATION AND CONTRIBUTION.**

16          (a) RULE OF CONSTRUCTION.—Nothing in this Act  
17          (including the amendments made by this Act) shall be con-  
18          strued to exempt a VOIP service provider from require-  
19          ments imposed by the Federal Communications Commis-  
20          sion or a State commission on all VOIP service providers  
21          to—

22                  (1) pay appropriate compensation for the trans-  
23          mission of a VOIP service over the facilities and  
24          equipment of another provider; or

1           (2) contribute on an equitable and non-discrimi-  
2 natory basis to the preservation and advancement  
3 of universal service.

4           (b) DEFINITIONS.—As used in this section—

5           (1) the terms “VOIP service provider” and  
6 “VOIP service” have the meanings given such terms  
7 in section 716(h) of the Communications Act of  
8 1934, as added by section 301 of this Act; and

9           (2) the term “State commission” has the mean-  
10 ing given such term in section 3 of the Communica-  
11 tions Act of 1934 (47 U.S.C. 153).

## 12           **TITLE IV—MUNICIPAL** 13           **PROVISION OF SERVICES**

14           **SEC. 401. GOVERNMENT AUTHORITY TO PROVIDE SERV-**  
15           **ICES.**

16           (a) IN GENERAL.—Neither the Communications Act  
17 of 1934 nor any State statute, regulation, or other State  
18 legal requirement may prohibit or have the effect of pro-  
19 hibiting any public provider of telecommunications service,  
20 information service, or cable service (as such terms are  
21 defined in sections 3 and 602 of such Act) from providing  
22 such services to any person or entity.

23           (b) COMPETITION NEUTRALITY.—Any State or polit-  
24 ical subdivision thereof, or any agency, authority, or in-  
25 strumentality of a State or political subdivision thereof,

1 that is, owns, controls, or is otherwise affiliated with a  
2 public provider of telecommunications service, information  
3 service, or cable service shall not grant any preference or  
4 advantage to any such provider. Such entity shall apply  
5 its ordinances, rules, and policies, including those relating  
6 to the use of public rights-of-way, permitting, performance  
7 bonding, and reporting without discrimination in favor of  
8 any such provider as compared to other providers of such  
9 services.

10 (c) COMPLIANCE WITH OTHER LAWS NOT AF-  
11 FECTED.—Nothing in this section shall exempt a public  
12 provider from any law or regulation that applies to pro-  
13 viders of telecommunications service, information service,  
14 or cable service.

15 (d) REPORT.—Not later than 1 year after the date  
16 of the enactment of this Act, the Federal Communications  
17 Commission shall submit to the Congress a report on the  
18 status of the provision of telecommunications service, in-  
19 formation service, and cable service by States and political  
20 subdivisions thereof.

21 (e) DEFINITION OF PUBLIC PROVIDER.—For pur-  
22 poses of this section, the term “public provider” means  
23 a State or political subdivision thereof, or any agency, au-  
24 thority, or instrumentality of a State or political subdivi-  
25 sion thereof, that provides telecommunications service, in-

1 formation service, or cable service, or any entity that is  
2 owned, controlled, or is otherwise affiliated with such  
3 State or political subdivision thereof, or agency, authority,  
4 or instrumentality of a State or political subdivision there-  
5 of.

## 6 **TITLE V—BROADBAND SERVICE**

### 7 **SEC. 501. STAND-ALONE BROADBAND SERVICE.**

8 Title VII of the Communications Act of 1934 (47  
9 U.S.C. 601 et seq.) is further amended by adding after  
10 section 717 (as added by section 301 of this Act) the fol-  
11 lowing new section:

### 12 **“SEC. 718. STAND-ALONE BROADBAND SERVICE.**

13 “(a) PROHIBITION.—A broadband service provider  
14 shall not require a subscriber, as a condition on the pur-  
15 chase of any broadband service the provider offers, to pur-  
16 chase any cable service, telecommunications service, or  
17 VOIP service offered by the provider.

18 “(b) DEFINITIONS.—In this section:

19 “(1) The term ‘broadband service’ means a two-  
20 way transmission service that connects to the Inter-  
21 net and transmits information at an average rate of  
22 at least 200 kilobits per second in at least one direc-  
23 tion.

24 “(2) The term ‘broadband service provider’  
25 means a person or entity that controls, operates, or

1 resells and controls any facility used to provide  
 2 broadband service to the public, by whatever tech-  
 3 nology and whether provided for a fee, in exchange  
 4 for an explicit benefit, or for free.

5 “(3) The term ‘VOIP service’ has the meaning  
 6 given such term by section 716(1).”.

7 **SEC. 502. STUDY OF INTERFERENCE POTENTIAL OF**  
 8 **BROADBAND OVER POWER LINE SYSTEMS.**

9 Within 90 days after the date of enactment of this  
 10 Act, the Federal Communications Commission shall con-  
 11 duct, and submit to the Committee on Energy and Com-  
 12 merce of the House of Representatives and the Committee  
 13 on Commerce, Science, and Transportation of the Senate,  
 14 a study of the interference potential of broadband over  
 15 power line systems.

16 **TITLE VI—SEAMLESS MOBILITY**

17 **SEC. 601. DEVELOPMENT OF SEAMLESS MOBILITY.**

18 (a) STREAMLINED REVIEW.—

19 (1) The Commission shall further the develop-  
 20 ment of seamless mobility.

21 (2) Within 120 days after the date of enact-  
 22 ment of this Act, the Commission shall implement a  
 23 process for streamlined review and authorization of  
 24 multi-mode devices that permit communication

1 across multiple Internet protocol-enabled broadband  
2 platforms, facilities, and networks.

3 (b) STUDY.—The Commission shall undertake an in-  
4 quiry to identify barriers to the achievement of seamless  
5 mobility. Within 180 days after the date of enactment of  
6 this Act, the Commission shall report to the Congress on  
7 its findings and its recommendations for steps to eliminate  
8 those barriers.

9 (c) DEFINITIONS.—For purposes of this section, the  
10 term “seamless mobility” means the ability of a commu-  
11 nications device to select between and utilize multiple  
12 Internet protocol-enabled technology platforms, facilities,  
13 and networks in a real-time manner to provide a unified  
14 service.

Passed the House of Representatives June 8, 2006.

Attest:

KAREN L. HAAS,

*Clerk.*

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**H.R.5252**

**Title:** To promote the deployment of broadband networks and services.

**Sponsor:** [Rep Barton, Joe](#) [TX-6] (introduced 5/1/2006)    [Cosponsors](#) (55)

**Related Bills:** [H.RES.850](#)

**Latest Major Action:** 6/12/2006 Referred to Senate committee. Status: Received in the Senate and Read twice and referred to the Committee on Commerce, Science, and Transportation.

**House Reports:** [109-470](#), [109-470](#) Part 2

**SUMMARY AS OF:**

5/1/2006--Introduced.

Communications Opportunity, Promotion, and Enhancement Act of 2006 - Amends the Communications Act of 1934 to allow an eligible person or group to obtain a national franchise to provide cable service in a franchise area in lieu of any other authority under federal, state, or local law. Requires: (1) the filing of a franchise certification with the Federal Communications Commission (FCC); and (2) cable operators with a national franchise to provide a specified minimum of channel capacity for public, educational, and governmental use, and to meet certain other requirements. Provides for FCC enforcement of franchising requirements.

Requires an annual FCC report on the deployment of cable service, including deployment by new cable operators.

Empowers the FCC to enforce its broadband policy statement and principles. Requires an FCC study regarding whether such statement and principles are being achieved.

Requires each VOIP (voice over Internet protocol) service provider to ensure that 911 and E-911 services are provided to subscribers of VOIP services. Outlines rights and obligations of VOIP service providers.

Allows the municipal provision of cable services, requiring competition neutrality among all providers in an area.

Prohibits a broadband service provider from requiring a subscriber, as a condition for such service, to purchase any cable, telecommunications, or VOIP service offered by the provider.

Directs the FCC to further the development of seamless mobility, requiring a study identifying barriers to achieving seamless mobility.

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