

Regular Session, 2008

SENATE BILL NO. 422

BY SENATOR DUPLESSIS

CABLE TELEVISION. Provides for the Consumer Choice Television Act. (gov sig)

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AN ACT

To enact Chapter 10-A of Title 45 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 45:1356 through 1370, relative to cable services and video services; to create the "Consumer Choice for Television Act"; to provide guidelines for cable services and video services; to provide for certificate of franchise authority to be distributed by the secretary of state; to provide for franchise fees associated with cable services or video services; to provide for franchise fee audits and dispute resolutions; to provide for the distribution of these fees; to provide for a prohibition against build-out requirements; to authorize a local governmental subdivision to regulate a certificate holder; to prohibit discrimination with regards to cable services or video services; to provide for public, educational, and governmental access programming streams and support; to provide for local franchise agreements; to provide for a prohibition of in-kind contributions or grants; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 10-A of Title 45 of the Louisiana Revised Statutes of 1950, comprised of R.S. 45:1356 through 1370, is hereby enacted to read as follows:

1 **CHAPTER 10-A. CONSUMER CHOICE FOR TELEVISION ACT**

2 **§1356. Short title**

3 **This Chapter shall be known and may be cited as the "Consumer Choice**
4 **for Television Act"**.

5 **§1357. Legislative findings**

6 **The Legislature of Louisiana finds and declares that it is the policy of**
7 **this state to increase competition for cable services and video services**
8 **throughout the state in order to provide the widest possible diversity of**
9 **information and new resources to the general public and to encourage economic**
10 **development in this state. Increased competition in cable services and video**
11 **services not only provides consumers with more choice, better prices, and better**
12 **services, but also speeds the deployment of new communication technologies to**
13 **the public.**

14 **§1358. Definitions**

15 **When used in this Chapter:**

16 **(1) "Cable service" means the one-way transmission to subscribers of**
17 **video programming or other programming service and any subscriber**
18 **interaction required for the selection or use of such video programming or other**
19 **programming service, but shall not include any video programming provided**
20 **by a commercial mobile service provider.**

21 **(2) "Cable service provider" means any person or entity that provides**
22 **cable service over a cable system and directly or through one or more affiliates**
23 **owns a significant interest in such cable system, or who otherwise controls or is**
24 **responsible for, through any arrangement, the management and operation of**
25 **such system.**

26 **(3) "Cable system" means a facility consisting of a set of closed**
27 **transmission paths and associated signal generation, reception, and control**
28 **equipment that is designed to provide cable service which includes video**
29 **programming and which is provided to multiple subscribers within a**

1 community but does not include the following facilities or systems:

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

4 (b) A facility that serves subscribers without using any public right-of-
5 way.

6 (c) A facility of a common carrier which is subject, in whole or in part,
7 to common carrier regulation, except that such facility shall be considered a
8 cable system to the extent the facility is used in the transmission of video
9 programming directly to subscribers, unless the extent of such use is solely to
10 provide interactive on-demand services.

11 (d) An open video system to the extent the system is deemed under
12 federal law not to be a cable system.

13 (e) Any facilities of an electric utility used solely for operating its electric
14 system.

15 (4) "Certificate" means the certificate of franchise authority issued by
16 the secretary of state to a person or entity to provide cable service or video
17 service in this state.

18 (5) "Commercial mobile service provider" means an interconnected
19 radio communication service carried on between mobile stations or receivers
20 and land stations, and by mobile stations communicating among themselves,
21 provided for profit and to the public or to a substantial portion of the public.

22 (6) "Franchise" means an initial authorization, or renewal of an
23 authorization, issued by a franchising authority regardless of whether the
24 authorization is designated as a franchise, permit, license, resolution, contract,
25 certificate, agreement, or otherwise, that authorizes the construction and
26 operation of a cable system, or other wireline facilities used to distribute video
27 programming services, in the public rights-of-way.

28 (7) "Franchise authority" means any governmental entity empowered
29 by federal, state, or local law to grant a franchise for cable service or video

1 service.

2 (8) "Gross revenues" means all revenues received from subscribers for
3 the provision of cable service or video service, including franchise fees and all
4 revenues received from non-subscribers for advertising disseminated through
5 cable service or video service and home shopping services. Gross revenues shall
6 not include all of the following items:

7 (a) Amounts billed and collected from subscribers to recover any tax,
8 surcharge, or governmental fee.

9 (b) Any revenue not actually received, even if billed, such as bad debt.

10 (c) Any revenue received by any affiliate or any other person in
11 exchange for supplying goods or services to the cable service provider or video
12 service provider.

13 (d) Any amounts attributable to refunds, rebates, or discounts.

14 (e) Any revenues from late fees, returned check fees, or interest.

15 (f) Any revenues from sales or rental of property, except such property
16 the subscriber is required to buy or rent exclusively from the cable service
17 provider or video service provider to receive cable service or video service.

18 (g) Any revenues from services provided over the cable system or other
19 wireline facilities used to distribute video programming services that are not
20 classified as cable services or video services including without limitation revenue
21 received from telecommunications services, information services but not
22 excluding cable services or video services, Internet access services, and directory
23 or Internet advertising revenues, including but not limited to yellow pages,
24 white pages, banner advertisements, and electronic publishing advertising.
25 Where the sale of any non-cable service or non-video service is bundled with the
26 sale of one or more cable services or video services and sold for a single non-
27 itemized price, the term "gross revenues" shall include only those revenues that
28 are attributable to cable services or video services based on the provider's books
29 and records.

1 (h) Any revenues from sales for resale with respect to which the
2 purchaser is required to pay a franchise fee, provided the purchaser certifies in
3 writing that it will resell the service and pay a franchise fee with respect thereto.

4 (i) Any amounts attributable to a reimbursement of costs, including but
5 not limited to the reimbursements by programmers of marketing costs incurred
6 for the promotion or introduction of video programming.

7 (j) Any revenues from providing or maintaining inside wiring.

8 (9) "Incumbent service provider" means any cable service provider or
9 video service provider providing cable service or video service in a particular
10 municipality or unincorporated area of a parish on the effective date of this
11 Chapter.

12 (10) "Local governmental subdivision" means any parish or
13 municipality.

14 (11) "Predecessor" shall include but not be limited to any entity that
15 directly or indirectly through one or more intermediaries, controls, is controlled
16 by, or is under common control with a person receiving, obtaining, or operating
17 under a municipal or parish cable franchise through merger, sale, assignment,
18 restructuring, or any other type of transaction.

19 (12) "Public right-of-way" means the area on, below, or above a public
20 roadway, highway, street, public sidewalk, alley, or waterway.

21 (13) "Video programming" means programming provided by, or
22 generally considered comparable to programming provided by, a television
23 broadcast station.

24 (14) "Video service" means video programming services provided
25 through wireline facilities located at least in part in the public rights-of-way
26 without regard to delivery technology, including Internet protocol technology.
27 "Video service" shall not include any video programming provided by a
28 commercial mobile service provider as defined in this Section or video
29 programming provided as part of a service that enables users to access content,

1 information, e-mail, or other services offered over the public internet.

2 (15) "Video service provider" means any entity providing video service.
3 "Video service provider" shall not include a cable service provider or any
4 affiliate, successor, or assign of a cable service provider operating under a
5 franchise agreement with a local governmental subdivision in this state on the
6 effective date of this Chapter.

7 §1359. Certificate issued by the state; eligibility

8 A. Any person or entity seeking to provide cable service or video service
9 in this state after the effective date of this Chapter shall file an application for
10 a state franchise with the secretary of state as required by this Section.

11 B. The secretary of state may impose a fee for such application, after
12 developing a fee schedule in accordance with the procedures set forth in the
13 Administrative Procedure Act.

14 C. The secretary of state shall issue a certificate authorizing the
15 applicant to offer cable service or video service in this state within ten days of
16 receipt of an affidavit submitted by the applicant and signed by an officer or
17 general partner of the applicant affirming all of the following items:

18 (1) The applicant agrees to comply with all applicable federal and state
19 laws and regulations.

20 (2) A list of municipalities and parishes to be served, in whole or part,
21 by the applicant, which list shall be updated by the applicant prior to the
22 provision of cable service or video service to an area within a previously
23 undesignated local governmental subdivision.

24 (3) The location of the principal place of business and the names of the
25 principal executive officers of the applicant.

26 D. The certificate issued by the secretary of state shall contain all of the
27 following:

28 (1) A grant of authority to provide cable service or video service as
29 requested in the application.

1 **(2) A grant of authority to construct facilities along and over the public**
2 **roads or public works or public rights-of-way and along and parallel to any of**
3 **the railroads and waters in the state whether owned, maintained, or provided**
4 **by a local governmental subdivision or the state in the delivery of that service,**
5 **subject to the laws of this state, including the lawful exercise of police powers**
6 **of the local governmental subdivisions in which the service is delivered.**

7 **(3) A statement that the franchise is for a term of ten years, is**
8 **renewable, and is nonexclusive.**

9 **E. The certificate issued by the secretary of state is fully transferable to**
10 **any successor in interest to the applicant to which it is initially granted. A**
11 **notice of transfer shall be promptly filed with the secretary of state within ten**
12 **days of the completion of the transfer.**

13 **F. The certificate issued pursuant to this Chapter may be terminated by**
14 **the cable service provider or video service provider by submitting written notice**
15 **of the termination to the secretary of state.**

16 **G. A holder of a certificate who seeks to amend its current certificate to**
17 **include additional areas to be served shall file an amended application which**
18 **reflects the new service area to be served.**

19 **H. The failure of the secretary of state to notify the applicant of the**
20 **incompleteness of the applicant's affidavit or issue a certificate before the tenth**
21 **day after receipt of a completed affidavit shall constitute issuance of the**
22 **certificate applied for without further action on behalf of the applicant.**

23 **I. A cable service provider is deemed to have or have had a franchise to**
24 **provide cable service in a specific local governmental subdivision on the**
25 **effective date of this Chapter if any predecessor of the cable service provider**
26 **had a cable franchise agreement granted by that specific local governmental**
27 **subdivision on the effective date.**

28 **§1360. State franchise; effect on existing local franchise agreement**

29 **Any incumbent service provider providing cable service or video service**

1 in this state on the effective date of this Chapter under a franchise previously
2 granted by a local governmental subdivision is not subject to nor may it avail
3 itself of the state-issued certificate of franchise authority provisions of this
4 Chapter with respect to that local governmental subdivision until such franchise
5 expires. Notwithstanding any other provision of law to the contrary, any such
6 cable service provider or video service provider may offer cable service or video
7 service under a state-issued certificate of franchise authority in accordance with
8 the provisions of this Chapter upon meeting one of the following circumstances:

9 (1) Offering service in local governmental subdivisions where it
10 currently does not have an existing franchise.

11 (2) A mutually agreed upon date set by both the local governmental
12 subdivision issuing the existing franchise and the incumbent service provider
13 subject to the existing franchise to terminate the existing franchise provided in
14 writing to the secretary of state on a form required by the secretary of state.

15 (3) The expiration, prior to renewal or extension, of its existing
16 franchise.

17 **§1361. Franchise fee**

18 **A. The holder of a certificate may be required, pursuant to an ordinance**
19 **adopted by the local governmental subdivision, to pay a franchise fee equal to**
20 **a specified percentage of such holder's gross revenues received from the**
21 **provision of cable service or video service to subscribers located within the**
22 **municipality or unincorporated areas of the parish and from advertising**
23 **disseminated through cable service or video service and home shopping services**
24 **as allocated under Subsection D of this Section. However, this percentage shall**
25 **not exceed the lesser of the incumbent service provider's franchise fee rate**
26 **imposed by the local governmental subdivision, if any, or five percent of the**
27 **holder's gross revenues as defined in this Chapter. The ordinance imposing**
28 **such franchise fee shall set forth the certificate franchise fee rate which shall be**
29 **uniformly applicable to all holders of a state-issued certificate of franchise**

1 authority within the local governmental subdivision. The local governmental
2 subdivision shall provide a copy of the enabling ordinance to the holder of a
3 certificate as a condition to receiving any franchise fee payments. As a
4 condition precedent to a certificate holder's obligation to pay a franchise fee
5 established or changed pursuant to this Section, the local governmental
6 subdivision shall provide each certificate holder with a copy of each rate change
7 notification at least forty-five days in advance of the effective date of the rate
8 change.

9 B. The holder of a certificate shall pay to the local governmental
10 subdivision quarterly the aggregate amount of the franchise fees payable under
11 this Section. Each payment shall be made within thirty days after the end of the
12 preceding quarter for which payment is being made and shall be accompanied
13 by a statement showing the certificate holder's gross revenues attributable to
14 the local governmental subdivision for that quarter.

15 C. Any supporting statements shall be confidential and exempt from
16 disclosure as proprietary and trade secret information under any provision of
17 state law.

18 D. The amount of a cable service provider's or video service provider's
19 non-subscriber revenues from advertising disseminated through cable service
20 or video service and home shopping services that is allocable to a local
21 governmental subdivision is equal to the total amount of the cable service
22 provider's or video service provider's revenue received from such advertising
23 and home shopping services multiplied by the ratio of the number of
24 subscribers in such municipality or in the unincorporated area of such parish
25 on the preceding January first to the total number of subscribers receiving
26 cable service or video service from the cable service provider or video service
27 provider on that date.

28 E. The holder of a certificate may designate that portion of a
29 subscriber's bill attributable to any franchise fee imposed pursuant to this

1 Chapter and recover such amount from the subscriber as a separate line item
2 on the bill.

3 F. No local governmental subdivision shall levy any tax, license, fee, or
4 other assessment on a cable service provider or video service provider for or in
5 connection with the use of public rights-of-way other than the franchise fee
6 authorized by this Section or fee authorized by R.S. 45:1365 or a cable franchise
7 fee or other fee imposed upon a cable service provider or video service provider
8 in an existing franchise prior to the effective date of this Chapter. No local
9 governmental subdivision shall levy any other tax, license, fee, or other
10 assessment on a cable service provider or video service provider or its
11 subscribers, which is not generally imposed and applicable to a majority of all
12 other businesses. Nothing in this Subsection shall restrict the right of any local
13 governmental subdivision to impose ad valorem taxes, service fees, sales taxes,
14 or other taxes and fees lawfully imposed on other businesses within such local
15 governmental subdivision.

16 G. The certificate franchise fee authorized by this Section shall be in lieu
17 of any permit fee, encroachment fee, degradation fee, inspection fee, or other fee
18 assessed by a local governmental subdivision on a certificate holder for
19 occupation of or work within its public rights-of-way.

20 §1362. Franchise fee audits and dispute resolution

21 A. The local governmental subdivision, upon reasonable written request,
22 may review the business records of a cable service provider or video service
23 provider to the extent necessary to ensure payment of the franchise fee in
24 accordance with R.S. 45:1361.

25 B. Any suit with respect to a dispute arising out of or relating to the
26 amount of the franchise fee due to a local governmental subdivision under R.S.
27 45:1361 shall be filed either by the local governmental subdivision seeking to
28 recover an additional amount alleged to be due, or by the certificate holder
29 seeking a refund of an alleged overpayment, in a state or federal court of

1 competent jurisdiction within three years following the end of the month to
2 which the disputed amount relates; however, this time period may be extended
3 by written agreement between the certificate holder and the local governmental
4 subdivision.

5 C. Prior to filing suit, the local governmental subdivision or certificate
6 holder shall give the other party written notice of any dispute not resolved in the
7 normal course of business. Representatives of both parties, with authority to
8 settle the dispute, shall meet within thirty calendar days after receipt of the
9 notice, and thereafter as often as reasonably deemed necessary, to exchange
10 relevant information and attempt to resolve the dispute. If the dispute is not
11 resolved within sixty calendar days after receipt of the notice, either the local
12 governmental subdivision or certificate holder may initiate nonbinding
13 mediation. Good faith participation in and completion of the negotiation and
14 mediation procedures set forth in this Subsection shall be a condition precedent
15 to proceeding with the suit beyond its filing to interrupt the prescriptive period
16 set forth in this Section.

17 D. The local governmental subdivision may not employ, appoint, or
18 retain any person or entity for compensation that is dependent in any manner
19 upon the outcome of any such audit, including the audit findings, the recovery
20 of fees, or the recovery of any other payments. A person or entity may not
21 solicit or accept compensation dependent in any manner upon the outcome of
22 any such audit, including the audit findings, the recovery of fees, or the recovery
23 of any other payments.

24 E. A local governmental subdivision may contract with a third-party
25 administrator for the collection of the franchise fees and enforcement of the
26 provisions of this Chapter.

27 F. Each party shall bear its own costs and attorney fees incurred in
28 connection with any and all of the activities and procedures set forth in this
29 Section.

1 **§1363. Prohibition against build-out requirements**

2 **No franchising authority, state agency, or political subdivision of the**
3 **state may impose any build-out requirements for construction of a cable system**
4 **or wireline facilities used to distribute video programming services or for cable**
5 **service or video service deployment on a holder of a certificate, subject to the**
6 **provisions of Title 48 of the Louisiana Revised Statutes of 1950.**

7 **§1364. Public, educational, and governmental access programming streams**

8 **A. Not later than one hundred twenty days after a request by a local**
9 **governmental subdivision, the holder of a certificate shall provide the local**
10 **governmental subdivision in which it provides cable service or video service**
11 **with capacity in its network to allow public, educational, and governmental**
12 **(PEG) access programming streams for noncommercial programming**
13 **consistent with this Section.**

14 **B. The holder of a certificate shall designate a sufficient amount of**
15 **capability on its cable system or wireline facilities used to distribute video**
16 **programming services to allow for the provision of a comparable number of**
17 **PEG access programming streams a local governmental subdivision has**
18 **activated under the franchise agreement of the incumbent service provider with**
19 **the most subscribers in such local governmental subdivision as of the effective**
20 **date of this Chapter. If a local governmental subdivision did not have PEG**
21 **access programming streams as of the effective date of this Chapter, the cable**
22 **service provider or video service provider shall furnish, upon written request,**
23 **capability sufficient to support up to three PEG access programming streams**
24 **for a local governmental subdivision with a population of at least fifty thousand**
25 **and up to two PEG channels for a local governmental subdivision with a**
26 **population of less than fifty thousand. However, a holder of a certificate shall**
27 **be under no obligation to carry PEG access programming streams on a basic or**
28 **analog tier.**

29 **C. A local governmental subdivision may use one PEG access**

1 programming stream without restrictions relating to repeat programming
2 provided in this Section. To qualify for any additional PEG accessing
3 programming stream authorized by this Section, a local governmental
4 subdivision shall certify that the additional PEG access programming stream,
5 upon activation, will be utilized for at least eight continuous hours of non-
6 repeating content per day. If a local governmental subdivision fails to utilize
7 any additional PEG access programming stream for at least eight continuous
8 hours of non-repeating content per day, such PEG access programming stream
9 shall no longer be made available to the local governmental subdivision and
10 may be programmed at the discretion of the cable service provider or video
11 service provider. At such time as the local governmental subdivision can certify
12 to the cable service provider or video service provider a schedule for at least
13 eight continuous hours of non-repeating daily programming, the cable service
14 provider or video service provider shall restore the previously lost
15 programming stream.

16 D. The operation of any PEG access programming stream provided
17 pursuant to this Section shall be the responsibility of the municipality or the
18 parish receiving the benefit of such programming stream and holder of a
19 certificate bears only the responsibility for the transmission of such
20 programming stream.

21 E. The local governmental subdivision shall ensure that all
22 transmissions of content and programming provided by or arranged by them
23 to be transmitted over a PEG access programming stream by a holder of a
24 certificate are provided and submitted to the cable service provider or video
25 service provider in a manner or form that is capable of being accepted and
26 transmitted by the provider over its network without further alteration or
27 change in the content or transmission signal and which is compatible with the
28 technology or protocol utilized by the cable service provider or video service
29 provider to deliver its cable service or video service.

1 F. Where technically feasible, the incumbent service provider shall,
2 upon receipt of a written request of a holder of a certificate, negotiate in good
3 faith to interconnect its cable system or wireline facilities used to distribute
4 video programming services with the cable system or wireline facilities used to
5 distribute video programming services of such certificate holder on mutually
6 acceptable and reasonable terms in order to enable such certificate holder to
7 gain access to PEG programming. Interconnection may be accomplished by
8 direct cable microwave link, satellite, or other reasonable method of connection.
9 No incumbent service provider shall withhold interconnection with another
10 cable service provider or video service provider.

11 G. A holder of a certificate is not required to interconnect for, or
12 otherwise to transmit, PEG content that is branded with the logo, name, or
13 other identifying marks of another cable service provider or video service
14 provider, and a municipality or parish may require a cable service provider or
15 video service provider to remove its logo, name, or other identifying marks from
16 PEG content that is to be made available to another provider.

17 §1365. In-kind contributions; PEG access support

18 A. Local governmental subdivisions are prohibited from imposing in-
19 kind compensations and grants.

20 B. Notwithstanding any other provision of law to the contrary, if a local
21 governmental subdivision was receiving PEG access support in the form of
22 periodic payments equal to a percentage of gross revenues or a prescribed per
23 subscriber amount from an incumbent service provider on the effective date of
24 this Chapter, the holder of a state-issued certificate of franchise authority may
25 be required, pursuant to an ordinance adopted by the local governmental
26 subdivision, to make the same periodic payments to the local governmental
27 subdivision equal to the same percentage of gross revenues or prescribed per
28 subscriber amount. To the extent a local governmental subdivision was
29 receiving PEG access support in the form of a lump sum payment from an

1 incumbent service provider that remains unsatisfied as of the effective date of
2 this Chapter, the holder of a state-issued certificate of franchise authority may
3 be required, pursuant to an ordinance adopted by the local governmental
4 subdivision, to provide the same lump sum payment to the local governmental
5 subdivision based on its proportion of the total number of cable service
6 subscribers or video service subscribers of all cable service providers or video
7 service providers in the local governmental subdivision. However, any payment
8 required by a local governmental subdivision under this Section shall end upon
9 the expiration date set forth in the incumbent service provider's franchise
10 agreement that was in effect as of the effective date of this Chapter. No
11 payments shall be due pursuant this Section until the local governmental
12 subdivision notifies the holder of a state-issued certificate of franchise authority,
13 in writing, of the percentage of gross revenues, the per subscriber amount, or
14 the lump sum payment amount and the expiration date of the local franchise
15 containing these obligations.

16 C. Payments under this Section shall be made in the same manner as a
17 part of the certificate holder's payment of franchise fees pursuant to R.S.
18 45:1361, and all definitions, exemptions, and administrative provisions
19 applicable to franchise fees shall apply to such payments.

20 D. The holder of a state-issued certificate of franchise authority may
21 designate that portion of a subscriber's bill attributable to any payments
22 required by this Section and recover the amount from the subscriber as a
23 separate line-item on the bill.

24 E. All payments made to a local governmental subdivision under this
25 Section are paid in accordance with 47 USC 531 and 541(a)(4)(B) and shall be
26 used by the local governmental subdivision as allowed by federal law only to
27 support the capital costs incurred for the construction and operation of PEG
28 access programming stream content and facilities.

29 F. No franchise fees as required in R.S. 45:1361 shall apply to payments

1 made pursuant to this Section.

2 §1366. Local government authority

3 A. A local governmental subdivision's authority to regulate the holder
4 of a certificate is limited to the following items:

5 (1) A requirement that the holder of a certificate which is providing
6 cable service or video service within the local governmental subdivision register
7 with the local governmental subdivision and maintain a current point of
8 contact.

9 (2) The establishment of reasonable guidelines regarding the use of PEG
10 access programming streams.

11 B. A local governmental subdivision shall allow the holder of a
12 certificate to install, construct, and maintain a network within public rights-of-
13 way and shall provide the holder of a certificate with open, comparable,
14 nondiscriminatory, and competitively neutral access to the public rights-of-way.
15 All use of public rights-of-way by the holder of a certificate is nonexclusive, and
16 a local governmental subdivision may not discriminate against the holder of a
17 certificate regarding any of the following items:

18 (1) The authorization or placement of a network in public rights-of-way.

19 (2) Access to a building or other property.

20 (3) Utility pole attachment terms.

21 C. Nothing contained in this Chapter shall impair the lawful exercise of
22 existing police powers of the local governmental subdivisions in which cable
23 service or video service is delivered.

24 §1367. Discrimination prohibited

25 A. A cable service provider or video service provider that has been
26 granted a certificate may not deny access to service to any group of potential
27 residential subscribers based on the income of the residents in the local area in
28 which such group resides.

29 B. For purposes of determining whether a cable service provider or

1 video service provider has violated the provisions of Subsection A of this
2 Section, cost, density, distance, and technological or commercial limitations
3 shall be taken into account. The inability to serve an end user because a holder
4 is prohibited from placing its own facilities in a building or property shall not
5 be found to be a violation of Subsection A of this Section. Use of an alternative
6 technology that provides a comparable content, service, and functionality shall
7 not be considered a violation of Subsection A of this Section. This Section may
8 not be construed as authorizing any general construction or deployment
9 requirements on a cable service provider or video service provider in
10 contravention of R.S. 45:1363.

11 C. Any potential residential subscriber or group of residential
12 subscribers within a municipality or parish identified pursuant to R.S.
13 45:1359(C)(2) who believes they are being denied access to services in violation
14 of Subsection A of this Section may file a complaint with the attorney general,
15 along with a clear statement of the facts and the information upon which they
16 are relying to support the complaint. Upon receipt of any such complaint, the
17 attorney general shall serve a copy of the complaint and supporting materials
18 upon the subject cable service provider or video service provider who will have
19 sixty days after receipt of such information to submit a written answer and any
20 other relevant information the provider wishes to submit to the attorney general
21 in response to the complaint. If, after further investigation of the allegations
22 contained in the complaint, the attorney general determines based on the
23 information submitted or gathered pursuant to such a process that a material
24 violation of Subsection A of this Section has occurred, the attorney general shall
25 issue a written order setting forth the basis for such finding and giving the cable
26 service provider or video service provider a reasonable time to cure such
27 violation.

28 **§1368. Compliance**

29 **If the holder of a certificate is found by a court of competent jurisdiction**

1 to be in noncompliance with the requirements of this Chapter, the court shall
 2 order the holder of the certificate, within a specified reasonable period of time,
 3 to cure the noncompliance.

4 §1369. Applicability of other laws

5 A. Nothing in this Chapter shall apply to a local governmental
 6 subdivision which has a home rule charter existing or adopted when the
 7 Louisiana Constitution of 1974 was adopted and which is governed by Article
 8 VI, Section 4 of the Louisiana Constitution of 1974. However, a local
 9 governmental subdivision operating pursuant to such a home rule charter
 10 provision may by ordinance elect to be governed by the provisions of this
 11 Chapter.

12 B. With respect to local governmental subdivisions which have home
 13 rule charters adopted after the Louisiana Constitution of 1974 was adopted and
 14 which are governed by Article VI, Section 5 of the Louisiana Constitution of
 15 1974 and with respect to other local governmental subdivisions without home
 16 rule charters, such local governmental subdivisions are denied the authority to
 17 adopt ordinances that are inconsistent with the provisions of this Chapter.

18 C. Nothing in this Chapter is intended to alter existing law regarding
 19 expropriation of property by a cable service provider or video service provider.

20 §1370. Conforming amendments

21 Except as provided in Title 48 of the Louisiana Revised Statutes of 1950,
 22 the provisions of this Chapter supersede any inconsistent provisions of state law,
 23 including but not limited to the following:

24 (1) R.S. 9:1253.

25 (2) R.S. 33:4361, 4401, 4405.

26 (3) R.S. 38:2869, 3087.37, 3087.57, 3087.97, 3087.117, 3087.227, 3087.265.

27 (4) R.S. 45:781(B).

28 Section 2. If any provision of this Act or the application thereof is held invalid, such
 29 invalidity shall not affect other provisions or applications of this Act which can be given

1 effect without the invalid provisions or applications, and to this end the provisions of this
2 Act are hereby declared severable.

3 Section 3. This Act shall become effective upon signature by the governor or, if not
4 signed by the governor, upon expiration of the time for bills to become law without signature
5 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
6 vetoed by the governor and subsequently approved by the legislature, this Act shall become
7 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Alan Miller.

DIGEST

Proposed law provides that any person or entity seeking to provide cable service or video service in this state file an application for a state franchise with the secretary of state and authorizes the secretary of state to impose an application fee.

Proposed law authorizes the secretary of state to issue a certificate authorizing the applicant to offer cable or video service.

Proposed law provides the certificate issued by the secretary of state is fully transferable to any successor in interest to the applicant and that a notice of transfer be filed with the secretary of state.

Proposed law provides for termination of a certificate by the cable service provider or video service provider submitting written notice to the secretary of state.

Proposed law provides for filing an amended application if the holder of the certificate wants to include additional areas.

Proposed law provides that a cable service provider is deemed to have a franchise in a specific local governmental subdivision when any predecessor of the provider has had a franchise agreement granted by the subdivision.

Proposed law provides that any entity providing cable or video service on the effective date of proposed law under a franchise previously granted is not subject to nor may it avail itself of the statewide franchise with respect to such subdivision until that franchise expires.

Proposed law authorizes a cable service provider or video service provider to offer service under a state-issued certificate of franchise authority upon meeting one of the following conditions:

- (1) In local governmental subdivisions where it currently does not have an existing franchise agreement.
- (2) A mutually agreed upon date set by both the local governmental subdivision issuing the existing franchise and the incumbent service provider subject to the existing franchise provided in writing to the secretary of state on a form required by the secretary of state.
- (3) The expiration, prior to renewal or extension, of its existing franchise.

Proposed law provides for payment of a franchise fee at a percentage of the holder's gross revenues received from providing service within the municipality or unincorporated areas of the parish and from advertising disseminated through cable service or video service and home shopping services. Provides that the percentage not exceed the lesser of the incumbent cable service provider's franchise fee imposed by a local governmental subdivision or 5% of the holder's gross revenues as defined by proposed law.

Proposed law provides for a franchise fee rate and for changes in the rate by a local governmental subdivision.

Proposed law requires certificate holders to pay the local governmental subdivision quarterly the aggregate amount of the franchise fees payable under proposed law.

Proposed law provides that any supporting statements as to a certificate holder's gross revenues is confidential and exempt from disclosure as proprietary and trade secret information under any provision of state law.

Proposed law prohibits a local governmental subdivision from levying any tax, license, fee, or other assessment on a cable service provider or video service provider other than the franchise fee authorized by proposed law or a cable franchise fee imposed upon a cable service provider or video service provider in an existing franchise prior to the effective date of proposed law.

Proposed law provides that nothing in proposed law restricts the right of any local governmental subdivision to impose taxes and fees lawfully imposed on other businesses.

Proposed law provides the franchise fee be in lieu of any permit fee, encroachment fee, degradation fee, inspection fee, or other fee assessed on a certificate holder for its occupation of or work within the public rights-of-way.

Proposed law provides the local governmental subdivision the ability to review business records of a cable service provider or video service provider to the extent necessary to ensure payment of fees.

Proposed law requires that any suit relating to the amount of franchise fee be filed in a state or federal court of competent jurisdiction within three years following the end of the month to which the dispute arises.

Proposed law provides that within 120 days of receipt of a request by a local governmental subdivision, the certificate holder provide cable service or video service with capacity in its network to allow public, educational, and governmental (PEG) access programming streams for noncommercial programming provided by proposed law.

Proposed law requires the certificate holder to designate a comparable number of PEG access programming streams a local governmental subdivision has activated under proposed law.

Proposed law requires a certificate holder, upon request of a local governmental subdivision without PEG access programming streams, to furnish up to three PEG channels for a local governmental subdivision with a population of at least 50,000 and up to two PEG channels for a local governmental subdivision with a population of less than 50,000. However, a certificate holder shall be under no obligation to carry PEG access programming streams on a basic or analog tier.

Proposed law authorizes a local governmental subdivision to use one PEG programming stream without restrictions relating to repeat programming.

Proposed law provides that the operation of any PEG access programming stream provided

pursuant to proposed law shall be the responsibility of the municipality or the parish receiving the benefit of the programming stream and the certificate holder bears only the responsibility for the transmission of the programming stream.

Proposed law provides the local governmental subdivision ensure all transmissions and programming transmitted over a PEG access programming stream submitted by a certificate holder to the cable service provider or video service provider in a manner that is capable of being transmitted by the provider over its network without further alteration or change in the content or transmission signal and which is compatible with the technology or protocol utilized by the cable service provider or video service provider to deliver its cable services or video services.

Proposed law prohibits local governmental subdivisions from imposing in-kind compensations and grants.

Proposed law provides that if a local governmental subdivision was receiving PEG access support in the form of periodic payments equal to a percentage of gross revenues or a prescribed per subscriber amount from an incumbent service provider, the certificate holder of franchise authority may be required, pursuant to an ordinance adopted by the local governmental subdivision, to make the same periodic payments to the local governmental subdivision equal to the same percentage of gross revenues or prescribed per subscriber amount.

Proposed law provides that the certificate holder of franchise authority may be required, pursuant to an ordinance adopted by the local governmental subdivision, to provide a lump sum payment to the local governmental subdivision based on its proportion of the total number of cable service subscribers or video service subscribers of all cable service providers or video service providers in the local governmental subdivision.

Proposed law provides that no payments shall be due under proposed law until the local governmental subdivision notifies the certificate holder of franchise authority, in writing, of the percentage of gross revenues, the per subscriber amount, or the lump sum payment amount and the expiration date the local franchise containing such obligations.

Proposed law provides that all payments made to a local governmental subdivision be used only to support the capital costs incurred for the construction and operation of PEG access programming stream content and facilities.

Proposed law authorizes a local governmental subdivision to regulate the holder of a certificate as follows:

- (1) A requirement that the holder of a certificate which is providing cable service or video service within the local governmental subdivision register with such local governmental subdivision and maintain a current point of contact.
- (2) The establishment of reasonable guidelines regarding the use of PEG access programming streams.

Proposed law provides for a local governmental subdivision to allow the holder of a certificate to install, construct, and maintain a network within public rights-of-way and to provide the holder of a certificate with open, comparable, nondiscriminatory, and competitively neutral access to the public rights-of-way.

Proposed law provides that the certificate holder not deny access to service to any group of potential residential subscribers based on the income of the residents. Cost, density, distance, and technological or commercial limitations shall be taken into account when determining whether a violation of proposed law has occurred.

Proposed law provides that a local governmental subdivision having a home rule charter existing or adopted when the La. Constitution of 1974 was adopted and which is governed by Art. VI, §4 of the La. Constitution shall not be subject to proposed law, but by local ordinance, may elect to be governed by proposed law.

Proposed law provides that local governmental subdivisions which have home rule charters adopted after the La. Constitution of 1974 was adopted and which are governed by Art. VI, §5 of the La. Constitution and local governmental subdivisions without home rule charters are denied the authority to adopt ordinances that are inconsistent with proposed law.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 45:1356-1370)