

House Bill 227

By: Representatives Lewis of the 15th, Martin of the 47th, Stephens of the 164th, Ehrhart of the 36th, Watson of the 91st, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 36 of the Official Code of Georgia Annotated, relating to local government,
2 so as to provide for the expedited franchising of cable and video services by the Secretary
3 of State; to provide for a short title; to provide for definitions; to provide franchise options
4 for cable service providers and video service providers; to provide a process for the issuance
5 of a state franchise; to provide for transfers, modifications, and terminations of a state
6 franchise; to provide for franchise fees; to require customer service; to provide for public,
7 educational, and governmental programming under a state franchise; to provide a service
8 outlet to municipalities and counties and complimentary basic cable service or video service
9 to public schools and public libraries over such service outlet; to provide certain limitations
10 on requirements that may be imposed upon holders of a state franchise; to prohibit
11 discrimination towards potential residential subscribers; to provide for related matters; to
12 provide an effective date; to repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 style="text-align:center">**SECTION 1.**

15 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended
16 by adding a new chapter to read as follows:

17 style="text-align:center">"CHAPTER 76

18 36-76-1.

19 This chapter shall be known and may be cited as the 'Consumer Choice for Television Act.'

20 36-76-2.

21 As used in this chapter, the term:

22 (1) 'Advertising and home shopping services revenues' means the amount of a cable
23 service provider or video service provider's nonsubscriber revenues from advertising

1 disseminated through cable service or video service and home shopping services. The
2 amount of such revenues that are allocable to a municipality or county is equal to the total
3 amount of the cable service provider or video service provider's revenue received from
4 such advertising and home shopping services multiplied by the ratio of the number of
5 such provider's subscribers located in such municipality or in the unincorporated area of
6 such county to the total number of such provider's subscribers. Such ratio shall be based
7 on the number of such provider's subscribers as of January 1 of the current year, except
8 that in the first year in which services are provided, such ratio shall be computed as of the
9 earliest practical date.

10 (2) 'Affected local governing authority' means any municipal governing authority when
11 any part of such municipality is located within the service area and any county governing
12 authority when any part of the unincorporated area of such county is located within the
13 service area.

14 (3) 'Cable service' means the one-way transmission to subscribers of video programming
15 or other programming service and subscriber interaction, if any, which is required for the
16 selection or use of such video programming or other programming service. Cable service
17 shall not include any video programming provided by a provider of commercial mobile
18 service as defined in 47 U.S.C. Section 332(d).

19 (4) 'Cable service provider' means any person or group of persons:

20 (A) Who provides cable service over a cable system and directly or through one or
21 more affiliates owns a significant interest in such cable system; or

22 (B) Who otherwise controls or is responsible for, through any arrangement, the
23 management and operation of such a cable system.

24 (5) 'Cable system' means a facility consisting of a set of closed transmission paths and
25 associated signal generation, reception, and control equipment that is designed to provide
26 cable service which includes video programming and which is provided to multiple
27 subscribers within a community, but such term shall not include:

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

30 (B) A facility that serves subscribers without using any public right of way as defined
31 in this Code section;

32 (C) A facility of a common carrier which is subject, in whole or in part, to the
33 provisions of 47 U.S.C. Sections 201 through 276, except that such facility shall be
34 considered a cable system, other than for purposes of 47 U.S.C. Section 541(c), to the
35 extent such facility is used in the transmission of video programming directly to
36 subscribers, unless the extent of such use is solely to provide interactive on-demand
37 services;

1 (D) An open video system that complies with 47 U.S.C. Section 573; or

2 (E) Any facility of any electric utility used solely for operating such electric utility
3 system.

4 (6) 'Franchise' means an initial authorization or renewal of an authorization issued by a
5 franchise authority, regardless of whether the authorization is designated as a franchise,
6 permit, license, resolution, contract, ordinance, certificate, agreement, or otherwise, that
7 authorizes the construction or operation of a cable service provider or video service
8 provider's network in the public rights of way.

9 (7) 'Franchise authority' means any governmental entity empowered by federal, state, or
10 local law to grant a franchise. With regard to the holder of a state franchise within the
11 service areas covered by such state franchise, the Secretary of State is the sole franchising
12 authority. With respect to a franchise agreement with a municipal or county governing
13 authority, that municipality or county is the sole franchising authority within the service
14 areas covered by that local franchise.

15 (8) 'Gross revenues' means all revenues received from subscribers for the provision of
16 cable service or video service, including franchise fees for cable service providers and
17 video service providers, and advertising and home shopping services revenues and shall
18 be determined in accordance with generally accepted accounting principles. Gross
19 revenues shall not include:

20 (A) Amounts billed and collected as a line item on the subscriber's bill to recover any
21 taxes, surcharges, or governmental fees that are imposed on or with respect to the
22 services provided or measured by the charges, receipts, or payments therefor; provided,
23 however, that for purposes of this Code section, such tax, surcharge, or governmental
24 fee shall not include any ad valorem taxes, net income taxes, or generally applicable
25 business or occupation taxes not measured exclusively as a percentage of the charges,
26 receipts, or payments for services;

27 (B) Any revenue, such as bad debt, not actually received, even if billed;

28 (C) Any revenue received by any affiliate or any other person in exchange for
29 supplying goods or services used by the provider to provide cable service or video
30 programming;

31 (D) Any amounts attributable to refunds, rebates, or discounts;

32 (E) Any revenue from services provided over the network that are associated with or
33 classified as noncable or nonvideo services under federal law, including, without
34 limitation, revenues received from telecommunications services, information services
35 other than cable service or video service, Internet access services, or directory or
36 Internet advertising revenue, including, without limitation, yellow pages, white pages,
37 banner advertisements, and electronic publishing advertising. Where the sale of any

1 such noncable or nonvideo service is bundled with the sale of one or more cable
2 services or video services and sold for a single nonitemized price, the term 'gross
3 revenues' shall include only those revenues that are attributable to cable service or video
4 service based on the provider's books and records, such revenues to be allocated in a
5 manner consistent with generally accepted accounting principles;

6 (F) Any revenue from late fees not initially booked as revenues, returned check fees,
7 or interest;

8 (G) Any revenue from sales or rental of property, except such property as the
9 subscriber is required to buy or rent exclusively from the cable service provider or
10 video service provider to receive cable service or video service;

11 (H) Any revenue received from providing or maintaining inside wiring;

12 (I) Any revenue from sales for resale with respect to which the purchaser is required
13 to pay a franchise fee, provided the purchaser certifies in writing that it shall resell the
14 service and pay a franchise fee with respect thereto; or

15 (J) Any amounts attributable to a reimbursement of costs including, but not limited to,
16 the reimbursements by programmers of marketing costs incurred for the promotion or
17 introduction of video programming.

18 (9) 'Incumbent service provider' means any cable service provider or video service
19 provider providing cable service or video service, respectively, in a municipality or in an
20 unincorporated area of a county on July 1, 2007.

21 (10) 'Original programming' means programming produced specifically for or about a
22 municipality or county or citizens thereof and includes public government meetings.
23 Original programming shall not include character generated messages, video bulletin
24 board messages, traffic cameras, or other passively produced content.

25 (11) 'PEG' means public, educational, or governmental.

26 (12) 'Public right of way' means the area in, on, along, over, or under the public roads
27 that are part of the municipal or county road system or the state highway system.

28 (13) 'Service area' means the geographic territory within a municipality or
29 unincorporated area of a county where a cable service provider or video service provider
30 provides or has proposed to offer cable service or video service pursuant to a franchise.

31 (14) 'Subscriber' means any person or entity lawfully receiving video service from a
32 video service provider or cable service from a cable service provider.

33 (15) 'Video programming' means programming provided by, or generally considered
34 comparable to programming provided by, a television broadcast station, as set forth in 47
35 U.S.C. Section 522(20).

36 (16) 'Video service' means the provision of video programming through wireline
37 facilities located at least in part in the public rights of way without regard to delivery

1 technology, including Internet protocol technology. This term shall not include any video
2 programming provided by a provider of commercial mobile service as defined in 47
3 U.S.C. Section 332(d) or video programming provided as part of and via a service that
4 enables users to access content, information, e-mail, or other services offered over the
5 public Internet.

6 (17) 'Video service provider' means an entity providing video service as defined in this
7 Code section. This term shall not include a cable service provider.

8 36-76-3.

9 (a)(1) Any entity or person seeking to provide cable service or video service in this state
10 after July 1, 2007, at the discretion of the cable service provider or video service provider,
11 may elect from among the franchise options as set forth in this Code section. A cable
12 service provider or video service provider may not provide cable service or video service
13 without a franchise obtained pursuant to this chapter.

14 (2) A cable service provider or video service provider may elect to negotiate a local cable
15 service or video service franchise agreement with a municipal or county franchise
16 authority duly authorized under the laws of Georgia and may enter into a negotiated cable
17 television franchise agreement in accordance with Title VI of the Communications Act
18 of 1934, as amended, 47 U.S.C. Section 521 et seq., or a video service franchise
19 agreement in accordance with applicable state and federal law that establishes the terms
20 and conditions for the franchise agreement within the jurisdictional limits of that
21 municipality or county. A local cable service or video service franchise agreement
22 entered into after July 1, 2007, shall remain in force and effect through its expiration date
23 notwithstanding subsection (g) of Code Section 36-76-4.

24 (3) A cable service provider or video service provider may elect to adopt the terms of a
25 negotiated franchise agreement entered into between a cable service provider or video
26 service provider and a municipal or county franchise authority in the service area in
27 which the provider desires to provide service. The municipal or county franchise
28 authority shall be required to enter into any such negotiated franchise agreement upon the
29 same terms and conditions to any requesting cable service provider or video service
30 provider. A local cable service or video service franchise agreement that is adopted by
31 a cable service provider or video service provider after July 1, 2007, shall remain in force
32 and effect through its expiration date notwithstanding subsection (g) of Code Section
33 36-76-4.

34 (4) A cable service provider or video service provider may elect after July 1, 2007, to file
35 an application for a state franchise in one or more specified service areas with the
36 Secretary of State in accordance with the procedures set forth in this chapter.

1 (b) The alternatives in subsection (a) of this Code section are not mutually exclusive. A
2 cable service provider or video service provider may elect after July 1, 2007, to negotiate
3 with a municipal or county franchise authority to enter into a franchise agreement within
4 a specified service area and may also obtain a state franchise for a different service area.
5 A cable service provider or video service provider may not operate under a franchise
6 agreement with a municipal or county governing authority and a state franchise from the
7 Secretary of State for the same service area.

8 36-76-4.

9 (a) To receive a state franchise, a cable service provider or video service provider shall file
10 an application for a state franchise with the Secretary of State, with a copy of such
11 application provided simultaneously to each affected municipal or county governing
12 authority at least 45 days prior to offering cable service or video service to subscribers
13 within a specified service area.

14 (b) The Secretary of State may impose a fee not to exceed \$500.00 for a state franchise
15 application.

16 (c) The application for a state franchise shall consist of an affidavit signed by an officer
17 or general partner of the applicant that contains each of the following:

18 (1) An affirmative declaration that the applicant shall comply with all applicable federal
19 and state laws and regulations, including municipal and county ordinances and
20 regulations regarding the placement and maintenance of facilities in the public right of
21 way that are generally applicable to all users of the public right of way and specifically
22 including Chapter 9 of Title 25, the 'Georgia Utility Facility Protection Act';

23 (2) A description of the applicant's service area, which description shall be sufficiently
24 detailed so as to allow a local government to respond to subscriber inquiries, including
25 the name of each municipal or county governing authority within the service area. For
26 the purposes of this paragraph, an applicant may, in lieu of or as supplement to a written
27 description, provide a map on 8 1/2 by 11 inch paper that is clear and legible and that
28 fairly depicts the service area by making reference to the municipal or county governing
29 authority to be served. If the geographical area is less than an entire municipality or
30 county, the map shall describe the boundaries of the geographic area to be served in clear
31 and concise terms;

32 (3) The location of the applicant's principal place of business, the name or names of the
33 principal executive officer or officers of the applicant, information concerning payment
34 locations or addresses, and general information concerning equipment returns; and

35 (4) Certification that the applicant is authorized to conduct business in the State of
36 Georgia and that the applicant possesses satisfactory financial and technical capability

1 to provide cable service or video service and a description of such capabilities. Such
2 certification is not required from an incumbent service provider or any cable service
3 provider or video service provider that has wireline facilities located in the public right
4 of way as of July 1, 2007.

5 (d) If an application is incomplete, the Secretary of State shall notify the applicant within
6 ten days of the receipt of such application and shall provide the applicant with a reasonable
7 period of time in which to provide a complete application. If no such notification is made
8 within ten days of the receipt of the application, the application shall be deemed complete.
9 Within 45 days of the receipt of a completed application, the Secretary of State shall,
10 except as set forth in subsection (f) of this Code section, issue a state franchise that contains
11 the following:

12 (1) A nonexclusive grant of authority to provide cable service or video service as
13 requested in the application;

14 (2) A nonexclusive grant of authority to construct, maintain, and operate facilities along,
15 across, or on the public right of way in the delivery of cable service or video service,
16 subject to applicable federal and state laws and regulations, including municipal and
17 county ordinances and regulations, regarding the placement and maintenance of facilities
18 in the public right of way that are generally applicable to all users of the public right of
19 way and specifically including Chapter 9 of Title 25, the 'Georgia Utility Facility
20 Protection Act'; and

21 (3) The expiration date of the state franchise, which shall be ten years from the date of
22 issuance, subject to renewal.

23 (e) The failure of the Secretary of State to issue a state franchise within 45 days of the
24 receipt of a completed application from an incumbent service provider or a cable service
25 provider or video service provider that has wireline facilities located in any public right of
26 way as of July 1, 2007, shall constitute issuance of the requested state franchise to the
27 applicant without further action required by the applicant. The failure of the Secretary of
28 State to issue a state franchise within 45 days of the receipt of a completed application from
29 a cable service provider or video service provider that does not have an existing franchise
30 with a municipal or county governing authority or that does not have wireline facilities
31 located in any public right of way as of July 1, 2007, shall constitute temporary issuance
32 of the requested state franchise to the applicant subject to the provisions of subsection (f)
33 of this Code section.

34 (f) A municipal or county governing authority that reasonably believes an applicant that
35 has not yet accessed rights of way in that municipality or unincorporated area of a county
36 and does not possess satisfactory financial and technical capability to provide cable service
37 or video service or is not duly authorized to conduct business in Georgia must object to the

1 issuance of a state franchise before it is officially issued by the Secretary of State. If a
2 municipal or county governing authority objects to the issuance of a state franchise on
3 these grounds, the Secretary of State shall consider whether the objection is well founded
4 and shall make a determination as to whether to grant the state franchise notwithstanding
5 the objection or to deny or suspend the application pending the receipt of information
6 sufficient to demonstrate the applicant has satisfactory financial and technical capability.
7 If the Secretary of State has not acted on the objection of a municipal or county governing
8 authority's objection and a state franchise is issued as set forth in subsection (e) of this
9 Code section, then such temporary issuance of the state franchise shall be subject to the
10 Secretary of State's determination on the objection.

11 (g)(1) At any time after July 1, 2007, an incumbent service provider may file an
12 application for a state franchise pursuant to this Code section with the Secretary of State
13 with a copy provided to each affected municipal or county governing authority except as
14 set forth in paragraphs (2) and (3) of subsection (a) of Code Section 36-76-3. Upon the
15 Secretary of State issuing such state franchise, any existing franchise for the service area
16 covered by the state franchise shall, subject to the continuation of PEG support
17 obligations in paragraph (4) of this subsection, terminate and be of no further force or
18 effect.

19 (2) An incumbent service provider that elects to terminate an existing franchise for the
20 service area covered by the state franchise under this subsection remains subject to the
21 contractual rights, duties, and obligations incurred by the incumbent service provider
22 under the terms and conditions of the terminated local franchise that are owed to any
23 private person, including a subscriber.

24 (3) As used in this subsection, the term 'private person' shall not include:

25 (A) The municipal or county governing authority that issued the terminated local
26 franchise;

27 (B) A political subdivision, government agency, or authority of the state not described
28 in subparagraph (A) of this paragraph; or

29 (C) Any official, agent, or employee acting in an official capacity of the municipal or
30 county governing authority that issued the terminated local franchise.

31 (4) An incumbent service provider that elects to terminate a franchise under this
32 subsection shall continue to provide PEG access support under the same terms as the
33 terminated local franchise had it not been terminated until the local franchise would have
34 expired under its own terms.

35 (5) Notwithstanding a termination of a local franchise pursuant to this subsection, a
36 municipality or county shall be entitled to operate its existing PEG channel or channels
37 relating to the number of channels and the usage criteria for such channels under the same

1 terms as the terminated local franchise had it not been terminated, pursuant to this
2 subsection, until July 1, 2012.

3 (6) An incumbent service provider that elects to terminate a franchise under this
4 subsection, shall, until July 1, 2012, continue to provide access on the nonbasic or digital
5 tier to any municipality or county that has an activated public safety training channel as
6 of July 1, 2007. This channel must be used exclusively for the purpose of training public
7 safety personnel. After July 1, 2012, the state franchise holder shall be entitled to use
8 other reasonable, readily accessible means to accomplish the purpose of the channel.

9 (7) Each holder of a state franchise shall have the obligation to provide access to the
10 same number of PEG channels pursuant to Code Section 36-76-8 and the additional PEG
11 support cash payments specified in this paragraph for PEG access facilities in a service
12 area as the incumbent service provider with the most subscribers in such service area as
13 of January 1, 2007, which obligation shall continue until the local franchise would have
14 expired under its own terms as specified in paragraph (4) of this subsection. To the
15 extent such incumbent service provider provides PEG access support during said period
16 in the form of periodic payments to the municipal or county governing authority equal
17 to a percentage of gross revenue or a prescribed per subscriber amount, the state franchise
18 holder shall be obligated to make the same periodic payments to the governing authority
19 at the same time and equal to the same percentage of gross revenue or prescribed per
20 subscriber amount. To the extent such incumbent service provider provides PEG access
21 support to the applicable governing authority during said period in the form of a lump
22 sum payment that remains unsatisfied as of July 1, 2007, the holder of a state franchise
23 shall be obligated to provide a lump sum payment to said authority based on its
24 proportion of the total number of cable service and video service subscribers of all service
25 providers in such service area. No payments shall be due under this paragraph until the
26 municipality or county notifies the respective providers, in writing, of the percentage of
27 gross revenues, the per subscriber amount, or the lump sum payment amount and the
28 expiration date of the local franchise obtaining such obligations. The holder of a state
29 franchise may designate that portion of the subscriber's bill attributable to any fee
30 imposed pursuant to this paragraph as a separate item on the bill and recover such amount
31 from the subscriber.

32 36-76-5.

33 (a) A state franchise shall be fully transferable to any successor in interest to the applicant.
34 A notice of transfer shall be filed by the transferee with the Secretary of State with a copy
35 provided to each affected municipal or county governing authority within 45 days of such

1 transfer. The transfer notification shall consist of an affidavit signed by an officer or
2 general partner of the transferee that contains each of the following:

3 (1) An affirmative declaration that the applicant shall comply with all applicable federal
4 and state laws and regulations, including municipal and county ordinances and
5 regulations, regarding the placement and maintenance of facilities in any public right of
6 way that are generally applicable to all users of the public right of way and specifically
7 including Chapter 9 of Title 25, the 'Georgia Utility Facility Protection Act';

8 (2) A description of the transferee's service area, including the name of each municipal
9 or county governing authority within the service area;

10 (3) The location of the transferee's principal place of business and the name or names
11 of the principal executive officer or officers of the transferee; and

12 (4) A description of material changes, if any, of the information set forth in the
13 applicant's initial application for a state franchise.

14 (b) Any outstanding liabilities that have become due and are still owed to a municipal or
15 county governing authority under a state franchise issued pursuant to this chapter shall be
16 fully transferable under this Code section to any successor in interest to the applicant.

17 (c) The failure of the Secretary of State to issue an amended state franchise within 45 days
18 of the receipt of a completed transfer notice shall constitute issuance of the requested
19 amended state franchise to the transferee without further action required.

20 (d) A cable service provider or video service provider may modify its service area covered
21 by the state franchise by notifying the Secretary of State of changes to the service area,
22 with a copy provided to each affected municipal or county governing authority, at least ten
23 days prior to the effective date of such change. Such notification shall contain a
24 geographic description of the new service area or areas and a list of each municipal or
25 county governing authority within the service area.

26 (e) A state franchise issued pursuant to this chapter may be terminated by the cable service
27 provider or video service provider by submitting a notice of termination to the Secretary
28 of State with a copy provided to each affected municipal or county governing authority.
29 Such notice shall identify the cable service provider or video service provider, the affected
30 service area, and the effective date of such termination, which shall not be more than 60
31 days from the date of filing the notice of termination.

32 36-76-6.

33 (a) The holder of a state franchise shall pay to each affected local governing authority a
34 franchise fee equal to 5 percent of such holder's gross revenues received from the provision
35 of cable service or video service to subscribers located within such municipality or
36 unincorporated area of the county in which it provides service.

1 (b) Such franchise fee shall be paid directly to each affected local governing authority
2 within 45 days after the last day of each calendar quarter. Such payment shall be
3 considered complete if accompanied by a statement showing, for the quarter covered by
4 the payment:

5 (1) The aggregate amount of the state franchise holder's gross revenues, specifically
6 identifying subscriber and advertising and home shopping services revenues under this
7 chapter insofar as the franchise holder's existing billing systems include such capability,
8 attributable to such municipality or unincorporated areas of the county; and

9 (2) The amount of the franchise fee payment due to such municipality or county.

10 In the event that franchise fees are not paid on or before the dates specified above, then the
11 affected local governing authority shall provide written notice to the franchise holder
12 giving the cable service provider or video service provider 30 days from the date of the
13 franchise holder's receipt of such notice to cure any such nonpayment. In the event
14 franchise fees are not remitted to the affected local government authority postmarked on
15 or before the expiration of the 30 day cure period, then the holder of the state franchise
16 shall pay interest thereon at a rate of 1 percent per month to the affected local governing
17 authority. If the 30 day cure period expires on Saturday, Sunday, or a legal holiday, the
18 due date shall be the next business day. A local governing authority shall waive any late
19 payment penalties if the franchise holder has previously submitted timely payments on
20 seven consecutive occasions. Moreover, the franchise holder shall not be assessed interest
21 on late payments if franchise payments were submitted in error to a neighboring local
22 governing authority.

23 (c) Each affected local governing authority may, no more than once annually, audit the
24 business records of the state franchise holder to the extent necessary to ensure payment in
25 accordance with this Code section. Once any audited period of a state franchise holder has
26 been the subject of a requested audit, such audited period of such state franchise holder
27 may not again be the subject of any audit. In the event of a dispute concerning the amount
28 of the franchise fee due to an affected local governing authority under this Code section,
29 an action may be brought in a court of competent jurisdiction by an affected local
30 governing authority seeking to recover an additional amount alleged to be due or by a state
31 franchise holder seeking a refund of an alleged overpayment; provided, however, that any
32 such action must be brought within three years following the end of the quarter to which
33 the disputed amount relates. Such time period may be extended by written agreement
34 between the state issued franchise holder and such affected local governing authority. Each
35 party shall bear the party's own costs incurred in connection with any such examination or
36 dispute. No affected local governing authority may employ, appoint, or retain any person
37 or entity for compensation that is dependent in any manner upon the outcome of any such

1 audit, including, without limitation, the audit findings, the recovery of fees, or the recovery
2 of any other payments. A person or entity may not solicit or accept compensation
3 dependent in any manner upon the outcome of any such audit, including, without
4 limitation, the audit findings, the recovery of fees, or the recovery of any other payments
5 by an affected local governing authority. In the event that an affected local governing
6 authority files an action to recover alleged underpayments of franchise fees and a court of
7 competent jurisdiction determines the cable service provider or video service provider has
8 underpaid franchise fees due for any 12 month period by 10 percent or more, the cable
9 service provider or video service provider may be required to pay the affected local
10 governing authority its reasonable costs associated with the audit along with any franchise
11 fee underpayments; provided, however, late payments shall not apply.

12 (d) The statements made pursuant to subsection (b) of this Code section and any records
13 or information furnished or disclosed by a cable service provider or video service provider
14 to an affected local governing authority pursuant to subsection (c) of this Code section shall
15 be exempt from public inspection under Code Section 50-18-70.

16 (e) No acceptance of any payment shall be construed as a release or as an accord and
17 satisfaction of any claim an affected local governing authority may have for further or
18 additional sums payable as a franchise fee.

19 (f) To the extent possible, any amounts overpaid by the holder of a state franchise shall be
20 deducted from future franchise payments.

21 (g) The holder of a state franchise may designate that portion of a subscriber's bill
22 attributable to any franchise fee imposed pursuant to this Code section as a separate item
23 on the bill and recover such amount from the subscriber; provided, however, that such
24 separate listing shall be referred to as a 'franchise' or a 'franchise fee.'

25 (h) No affected local governing authority shall levy any additional tax, license, fee,
26 surcharge, or other assessment on a cable service provider or video service provider for or
27 with respect to the use of any public right of way other than the franchise fee authorized
28 by this Code section. Nor shall an affected local governing authority levy any other tax,
29 license, fee, or assessment on a cable service provider or video service provider or its
30 subscribers that is not generally imposed and applicable to a majority of all other
31 businesses. The franchise fee authorized by this Code section is in lieu of any permit fee,
32 encroachment fee, degradation fee, or other fee that could otherwise be assessed on a state
33 issued franchise holder for the holder's occupation or work within the public right of way;
34 provided, however, that nothing in this Code section shall restrict the right of any
35 municipal or county governing authority to impose ad valorem taxes, sales taxes, or other
36 taxes lawfully imposed on a majority of all other businesses within such municipality or
37 county.

1 36-76-7.

2 The holder of a state franchise shall comply with the customer service standards as set forth
3 in 47 C.F.R. 76.309(c). Each affected local governing authority shall receive and handle
4 complaints from subscribers of the holder of a state franchise that reside in the local
5 governing authority's jurisdiction. If an affected local governing authority determines that
6 the holder of a state franchise is in material noncompliance with the customer service
7 standards required in this Code section, the affected local governing authority shall give
8 the cable service provider or video service provider a reasonable time to cure such
9 violation. If the cable service provider or video service provider does not cure such
10 violation within the time frame specified by the affected local governing authority, then the
11 affected local governing authority may file a complaint with the Governor's Office of
12 Consumer Affairs. The Governor's Office of Consumer Affairs shall have jurisdiction over
13 such complaints and over any complaints filed pursuant to subsection (c) of Code Section
14 36-76-11 and shall, after conducting a rulemaking proceeding in which all interested parties
15 may participate, promulgate rules and regulations setting forth the process of handling such
16 complaints and any penalties for noncompliance. For purposes of this Code section
17 'material noncompliance' means substantial and repeated failure of a cable service or video
18 service provider to comply with the subscriber service requirements set forth in 47 C.F.R.
19 76.309(c).

20 36-76-8.

21 (a) No later than 12 months after receipt of a written request by a municipal or county
22 governing authority, the holder of a state franchise shall designate capacity in its network
23 to allow for the airing of noncommercial PEG programming required by this Code section.

24 (b)(1) Subject to the usage criteria set forth in this subsection, a municipal or county
25 governing authority that does not have PEG access channels activated under the
26 incumbent service provider's franchise agreement as of July 1, 2007, may request a
27 sufficient amount of capacity on its network to support up to three PEG channels for a
28 municipality or unincorporated area of a county with a population of 50,000 or more or
29 up to two PEG channels for a municipality or unincorporated area of a county with a
30 population of less than 50,000, and the cable service provider or video service provider
31 shall designate such sufficient amount of capacity. No cable service provider or video
32 service provider shall be required to provide more than three PEG access channels on its
33 network within a municipality or unincorporated area of a county if there does not exist
34 at the time of the state franchise more than three active PEG channels in such
35 municipality or unincorporated area of the county.

1 (2) To qualify for the first PEG channel, the written request of the municipality or county
2 must include a certification that it has produced at least 15 hours of nonduplicative
3 original programming for production in the first month of operation and that the
4 municipality or county shall continue to produce at least 15 hours of nonduplicative
5 original programming for each month that the channel is provided.

6 (3) Alternatively, to qualify for the first PEG channel, two or more municipalities or
7 counties can collectively include a certification that they have produced at least 15 hours
8 of nonduplicative original programming for production in the first month of operation and
9 that the municipalities or counties shall continue to produce at least 15 hours of
10 nonduplicative original programming for each month that the channel is provided.

11 (4) To qualify for a second PEG channel on the basic or analog tier of service, the
12 municipality or county must certify that the first channel is being substantially utilized,
13 and that upon activation, the second PEG channel shall also be substantially utilized. For
14 purposes of this subsection, PEG channels shall be considered 'substantially utilized'
15 when 12 continuous hours of content are programmed on that channel each calendar day.
16 In addition, at least 75 percent of the 12 hours of programming for each business day over
17 each calendar quarter, on average, must be nonduplicative programming. Nonduplicative
18 programming shall include the first three broadcasts of a program within a month or the
19 first three showings in a day of a meeting of an elected government body.

20 (5) To qualify for a third PEG channel, a municipality or county with a population of
21 50,000 or greater must certify that the channel shall be programmed for at least eight
22 continuous hours of nonduplicative content per day. The third PEG channel shall only
23 be available on the nonbasic digital tier.

24 (6) Any municipality or county that has not obtained a second PEG channel on the basic
25 or analog tier may qualify for a second PEG channel on the nonbasic digital tier by
26 certifying that the channel shall be programmed for at least eight continuous hours of
27 nonduplicative content per day.

28 (7) Any PEG channel capability provided pursuant to this Code section that does not
29 comply with the usage criteria set forth in this subsection or is not substantially utilized
30 by the municipality or county shall no longer be made available after reasonable notice
31 is provided to the municipality or county but may be programmed at the franchise
32 holder's discretion. At such time as the municipality or county certifies to the franchise
33 holder that it shall meet the usage criteria for that particular channel, the cable service
34 provider or video service provider shall restore the previously lost channel. However, the
35 franchise holder shall be under no obligation to carry that channel on a basic or analog
36 tier.

1 (c) Upon request by a municipality or county that does not have an activated PEG channel,
2 the state franchise holder shall provide access to one nonexclusive PEG channel for the
3 purpose of providing public, educational, and government programming. This
4 nonexclusive channel is available as an additional option to municipalities and counties and
5 shall not eliminate the requirements of subsection (b) of this Code section.

6 (d) In the event that the provision of video service and cable service is federally mandated
7 to be digitally provided, the franchise holder shall be entitled to satisfy the PEG obligations
8 by locating the channels on any channel provided in the basic subscription service offered
9 by the provider.

10 (e) Municipalities, counties, and cable service providers and video service providers must
11 cooperate in the sharing of channel capacity to provide PEG access for municipalities and
12 counties served by the cable service provider or video service provider.

13 (f) The holder of a state franchise shall designate capacity on its system sufficient to allow
14 the provision of the same number of PEG access channels that a municipal or county
15 governing authority has activated under the incumbent service provider's franchise
16 agreement as of July 1, 2007.

17 (g) The operation of any PEG access channel provided pursuant to this Code section and
18 the production of programming thereon, including all capital costs and costs of production,
19 shall be the responsibility of the municipality or the county receiving the benefit of such
20 channel, and the holder of a state franchise shall only have the responsibility to transmit
21 such channel to subscribers. If the holder elects not to seek interconnection with the
22 incumbent under subsection (i) of this Code section or if the incumbent service provider
23 and the holder of a state franchise cannot reach mutual agreement on interconnection terms,
24 the holder of a state franchise shall be responsible for providing one location of
25 connectivity to each PEG access channel up to the first 200 feet from the holder's activated
26 wireline video programming distribution facility located in the holder's designated service
27 area.

28 (h) The municipality or the county must ensure that all transmissions of content and
29 programming provided by or arranged by them to be transmitted over a PEG channel by
30 a holder of a state franchise are provided and submitted to the cable service provider or
31 video service provider in a manner or form that is capable of being accepted and
32 transmitted by such provider over its system without further alteration or change in the
33 content or transmission signal and which is compatible with the technology or protocol
34 utilized by the cable service provider or video service provider to deliver its cable services
35 or video services. The provision of PEG content to the provider shall constitute
36 authorization for the provider to carry such content including, at the provider's option,
37 providing such content beyond the jurisdictional boundaries of the municipality or county.

1 (i) Where technically feasible, the holder of a state franchise and an incumbent service
2 provider must use reasonable efforts to interconnect their systems on mutually acceptable
3 and reasonable terms for the purpose of providing PEG programming. Interconnection
4 may be accomplished by direct cable microwave link, satellite, or other reasonable method
5 of connection. Holders of a state franchise and incumbent service providers may not
6 unreasonably withhold interconnection of PEG channels.

7 (j) A holder of a state franchise is not required to interconnect for or otherwise transmit
8 commercial PEG programming content or PEG content that is branded with the logo, name,
9 or other identifying marks of another cable service provider or video service provider, and
10 a municipality or county may require a cable service provider or video service provider to
11 remove its logo, name, or other identifying marks from PEG content that is to be made
12 available to another provider.

13 36-76-9.

14 A cable service provider or video service provider shall, upon written request by a
15 municipality or county, install, at no charge, one service outlet to a demarcation point
16 located on the outside of any designated municipal or county building or multibuilding
17 complex, provided such building demarcation point is within 125 feet from the cable
18 service provider or video service provider's activated distribution point of connection. A
19 cable service provider or video service provider shall not be required to extend its facilities
20 beyond the appropriate demarcation point located outside the building or to perform any
21 inside wiring. The cable service provider or video service provider shall provide
22 complimentary basic cable service or video service to public schools and public libraries
23 over that one service outlet free of charge, which service shall not be used for commercial
24 purposes. The cable service provider or video service provider shall provide
25 complimentary basic cable service or video service to public buildings other than public
26 schools and public libraries only to the extent such a complimentary service arrangement
27 existed under the terms of a local franchise agreement in effect as of January 1, 2007, and
28 shall continue only until the local franchise agreement would have expired under its own
29 terms; provided, however, that such provider shall not be precluded from providing such
30 additional complimentary service at its option. The municipality or county may not receive
31 service at the same building from more than one cable service or video service provider at
32 a time under this Code section.

33 36-76-10.

34 No franchising authority, state agency, or political subdivision of the state may impose any
35 build-out requirement on system construction or service deployment on a holder of a state

1 franchise. This chapter occupies the entire field of franchising or otherwise regulating
2 cable service and video service. An affected local governing authority's power to regulate
3 the holder of a state franchise is limited to:

4 (1) A requirement that the holder of a state franchise who is providing cable service or
5 video service within the municipality or unincorporated area of the county notify each
6 affected local governing authority at least ten days before providing service in such
7 municipality or county. A municipal or county governing authority may require the
8 holder of a state franchise to update the description of the service area provided in the
9 application for a state franchise annually and may also require the holder of a state
10 franchise to maintain a point of contact that is available during normal business hours;

11 (2) The establishment of reasonable guidelines regarding the use of PEG access
12 channels;

13 (3) The lawful and reasonable exercise of the police powers of the municipal or county
14 governing authority to the extent reasonably necessary to protect the health, safety, and
15 welfare of the public;

16 (4) The enactment and enforcement of lawful and reasonable laws and rules and
17 municipal or county ordinances and regulations concerning excavation, permitting,
18 bonding requirements, indemnification requirements, and placement and maintenance of
19 facilities in any public right of way that are generally applicable to all users of any public
20 right of way, except to the extent specifically precluded by subsection (h) of Code
21 Section 36-76-6; and

22 (5) The lawful and reasonable exercise of the rights established in this chapter.

23 36-76-11.

24 (a) A holder of a state franchise may not deny access to service to any group of potential
25 residential subscribers because of the income of the residents in the local area in which
26 such group resides.

27 (b) For purposes of determining whether a cable service provider or video service provider
28 has violated subsection (a) of this Code section, cost, density, distance, and technological
29 or commercial limitations shall be taken into account. An alleged violation of subsection
30 (a) of this Code section may only be considered within the description of the service area
31 set forth in an application or amended application for a state franchise. The inability to
32 serve an end user because a holder is prohibited from placing its own facilities in a building
33 or property shall not be found to be a violation of subsection (a) of this Code section. Use
34 of an alternative technology or service arrangement that provides comparable content,
35 service, and functionality may not be considered a violation of subsection (a) of this Code

1 section. This Code section may not be construed as authorizing any build-out requirements
2 on a cable service provider or video service provider.

3 (c) Any potential residential subscriber or group of residential subscribers who believes
4 it is being denied access to services in violation of subsection (a) of this Code section may
5 file a complaint with the Governor's Office of Consumer Affairs, along with a clear
6 statement of the facts and the information upon which it is relying to support the complaint.
7 Upon receipt of any such complaint, the Governor's Office of Consumer Affairs shall serve
8 a copy of the complaint and supporting materials upon the subject cable service provider
9 or video service provider, which shall have 60 days after receipt of such information to
10 submit a written answer and any other relevant information the provider wishes to submit
11 to the Governor's Office of Consumer Affairs in response to the complaint. If, after further
12 investigation of the allegations contained in the complaint, the Governor's Office of
13 Consumer Affairs determines, based on the information submitted or gathered pursuant to
14 such process, that a material violation of subsection (a) of this Code section has occurred,
15 the Governor's Office of Consumer Affairs shall issue a written order setting forth the basis
16 for such findings and giving the cable service provider or video service provider a
17 reasonable time to cure such violation.

18 (d) A holder of a state franchise is entitled to de novo review by a court of competent
19 jurisdiction of any order or finding by the Governor's Office of Consumer Affairs issued
20 pursuant to this Code section, and if such court finds that a holder of a state franchise is in
21 material noncompliance with this Code section, the holder shall have a reasonable period
22 of time, as specified by the court, to cure such noncompliance."

23 SECTION 2.

24 This Act shall become effective on July 1, 2007.

25 SECTION 3.

26 All laws and parts of laws in conflict with this Act are repealed.