Senate Bill 445

By: Senators Balfour of the 9th, Adelman of the 42nd, Tanksley of the 32nd, Zamarripa of the 36th and Tate of the 38th

AS PASSED

A BILL TO BE ENTITLED

AN ACT

To amend Title 36 of the Official Code of Georgia Annotated, relating to local government, so to provide for exceptions from certain restrictions on cable television systems; to define a certain term; to provide that before a franchising authority authorizes a public provider to deliver cable services, it must notify each private provider operating in the market; to provide for notification of deficiencies and time for a response; to provide for a corrective plan; to provide for the preparation of a business plan by a proposed public cable provider; to provide for assumptions and specific findings; to provide for the contents of a business plan; to provide for notice and public hearings; to provide for an ordinance or resolution authorizing service by a public cable provider; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended by striking in its entirety Code Section 36-18-5, relating to exceptions from certain restrictions on cable television systems, and inserting in lieu thereof the following:

"36-18-5.

This chapter shall not apply to any cable television system owned or operated by a city, a county, or a school system <u>as to operations within the geographical area of such city, county, or school system</u>."

SECTION 2.

Said title is further amended by striking in its entirety Code Section 36-90-2, relating to definitions related to the "Local Government Cable Fair Competition Act of 1999," and inserting in lieu thereof the following:

"36-90-2.

As used in this chapter, the term:

(1) 'Authorization' means the official act of a franchising authority to allow a public provider to deliver service.

~~(1)~~(2) 'Cable service' means:

(A) The one-way transmission to subscribers of (i) video programming or (ii) other programming service; and

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

~~(2)~~(3) 'Capital costs' means all costs of providing a service which are capitalized in accordance with generally accepted governmental accounting principles.

~~(3)~~(4) 'Cross-subsidization' or 'cross-subsidize' means the payment of any item of direct or indirect costs of providing a service which is not accounted for in the full cost accounting of providing the service.

~~(4)~~(5) 'Direct costs' means those expenses of a public provider which are directly attributable to the provision of a service that would be eliminated if the provision of said service were discontinued.

~~(5)~~(6) 'FCC' means the Federal Communications Commission.

~~(6)~~(7) 'Franchising authority' means any governmental entity which is empowered by law to grant a franchise and which is also a public provider.

~~(7)~~(8) 'Full-cost accounting' means the accounting for all costs incurred by a public provider in providing a service, including all direct and indirect costs, as required by this chapter. In preparation of such accounting, a public provider shall utilize cost accounting standards promulgated by the federal Costs Accounting Standards Board of the federal Office of Management and Budget so as to assure that all direct and indirect costs are included.

~~(8)~~(9) 'Generally accepted governmental accounting principles' means the accounting standards promulgated from time to time by the Governmental Accounting Standards Board.

~~(9)~~(10) 'Indirect costs' means any costs identified with two or more services or other public provider functions and which are not directly identified with a single service. Indirect costs may include, but are not limited to, administration, accounting, personnel, purchasing, legal, and other staff or departmental support. Indirect costs shall be allocated to two or more services in proportion to the relative burden each respective service places upon the cost category.

~~(10)~~(11) 'Private provider' means any person, firm, partnership, corporation, or association offering service, other than a public provider.

~~(11)~~(12) 'Public provider' means any county, municipal corporation, or other political subdivision of the state which provides service; any authority or instrumentality acting

on behalf of or for the benefit of any county, municipal corporation, or other political subdivision of the state which provides service; and any authority or instrumentality created by the state which provides service.

~~(12)~~(13) 'Service' means cable service provided by a private provider or a public provider.

~~(13)~~(14) 'Subscriber' means any private person lawfully receiving any cable service provided by a private or public provider by means of or in connection with a cable system.″

SECTION 3.

Said chapter is further amended by striking in its entirety Code Section 36-90-3, relating to a requirement that public providers conduct a cost benefit analysis and a public hearing prior to the authorization to deliver service, and inserting in lieu thereof the following:

″36-90-3.

~~(a) Prior to the authorization to deliver service, a public provider must prepare reasonable projections of at least a three-year cost-benefit analysis which identifies and discloses the total projected direct costs and indirect costs of and revenues to be derived from providing the service. Such costs shall be determined by using generally accepted governmental accounting principles.~~

~~(b) Prior to the authorization to deliver service, a public provider shall conduct at least one public hearing. A notice of the time, place, and date of the hearing shall be published in a newspaper of general circulation within the jurisdiction of the public provider once a week for the two weeks preceding the week in which the hearing is to be held.~~

(a) Before a franchising authority may begin the authorization process of permitting a public provider to deliver service, the franchising authority must notify each private provider serving the targeted market that the franchising authority intends to begin the process of authorizing a public provider to provide cable service. The notice must state that the private provider is not meeting the present and future needs of the community and shall set forth each such unmet need separately and fully in order that the private provider may reasonably ascertain the scope and nature of the issues identified by the franchising authority. The franchising authority must allow each private provider 30 days to present a plan to address the identified needs not being met, including a reasonable period of time to implement the plan. Neither the notification nor response to the notification provided for in this subsection shall affect the franchise agreement between a private provider and a franchising authority.

(b) If the franchising authority does not accept the private provider´s plan to address the identified issues submitted as provided in subsection (a) of this Code section, the franchising authority shall then conduct an independent feasibility analysis and require the

public provider to prepare a business plan to provide service. Such business plan shall set forth assumptions and specific findings as to:

(1) The cable service market share to be obtained by the public provider over a four-year period;

(2) The programming service offerings;

(3) Reasonable projections, for a period of at least four years, of the revenue and the direct, indirect, and imputed operating costs of providing service;

(4) The equipment needed to provide the service;

(5) The source and adequacy of the total direct and indirect capital to construct and operate the proposed system;

(6) The repayment of the debt service, including the length of payback of the principal debt;

(7) A cost-benefit analysis that shows a range of assumptions relating to market penetration rates, subscription rates, operating costs, and capital outlay;

(8) Assumptions as to programming costs;

(9) Assumptions as to actual or potential competition from all other providers;

(10) The allocation of costs between the public provider and other municipal operations; and

(11) The ability to address the issues cited in the notice to the private providers specified in subsection (a) of this Code section.

(c) In order for the business plan provided for in subsection (b) of this Code section to be adopted and the process to move forward, the business plan shall include, at a minimum, the following components:

(1) The total homes passed, provided that such shall be certified by the appropriate official responsible for municipal tax or census;

(2) Cable service basic penetration, estimated subscribers, and total homes passed, provided that such shall be reflective of the market analysis and not presume a penetration achieved by the fourth year of operation in excess of 40 percent without full independent verification;

(3) The overall estimated revenue takeout per home, provided that the same shall not exceed by more than 5 percent the amount being achieved by the private provider as developed from such publicly available information as franchise fee reports;

(4) The estimated miles of cable plant, provided that such shall be determined based on an actual survey conducted by public works employees and certified as to method and findings by a responsible supervisor;

(5) The average construction cost per cable service subscriber or cable plant mile or both, provided that such shall be based on an estimate provided by an independent supplier; and

(6) A definitive plan for the servicing of any capital utilized to fund the construction and operation of the cable system, including a reasonable payback period at an interest rate reflective of the public market and the inherent risks of the business.

(d) Prior to granting the authorization to the public provider, the franchising authority shall conduct at least two public hearings held at least two weeks apart. The public provider shall publish its business plan in its entirety and provide a complete copy to each private provider at least 30 days before the first public hearing. Such notice shall state that the business plan prepared by the public provider is available for public inspection each business day prior to the authorization and shall state the location where such inspection may be made. Notice of the time, place, and date of each hearing shall be published in a newspaper of general circulation within the jurisdiction of the county or municipality once a week for the two weeks preceding the week in which the hearing is to be held. In addition, the private provider shall be given two weeks´ written notice of the proposed hearing.

(e) Any authorization by the franchising authority shall be by passage of an ordinance or resolution and must:

(1) Find that the public provider possesses satisfactory financial and technical capability to be a public provider;

(2) Set forth the terms and conditions with respect to franchise terms and conditions, conditions of access to public property, and pole attachment; and

(3) Adopt the business plan.″

SECTION 4.

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