

First Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 07-0574.01 Duane Gall

HOUSE BILL 07-1222

HOUSE SPONSORSHIP

Balmer,

SENATE SPONSORSHIP

(None),

House Committees

Transportation & Energy

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE ENABLING OF COMPETITIVE CABLE TELEVISION
102 SERVICES THROUGH THE ISSUANCE BY THE PUBLIC UTILITIES
103 COMMISSION OF STATE-AUTHORIZED FRANCHISES FOR THE
104 DELIVERY OF CABLE TELEVISION SERVICES, AND, IN
105 CONNECTION THEREWITH, PROVIDING GREATER CONSUMER
106 CHOICE, IMPOSING BUILD-OUT REQUIREMENTS ON THE
107 PREDOMINANT SERVICE PROVIDER IN A SPECIFIED GEOGRAPHIC
108 AREA, REQUIRING SERVICE PROVIDERS TO CARRY PUBLIC,
109 EDUCATIONAL, AND GOVERNMENT PROGRAMMING, PROVIDING
110 FOR THE PAYMENT OF FEES, AND PROVIDING FOR ENFORCEMENT
111 OF REQUIREMENTS EXCLUSIVELY THROUGH A COURT OF
112 COMPETENT JURISDICTION.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Allows competition in the local cable television market by directing the Colorado public utilities commission (PUC) to issue state authorizations to provide cable service or video service.

Requires the PUC to issue such authorization within 30 days to a competitive cable service provider or competitive video service provider that files an affidavit stating:

- Its business address and the names of its principal officers;
- Its intention to abide by applicable state and federal requirements; and
- A description of the geographic area in which it intends to offer cable service or video service.

Requires a cable operator or a competitive video service provider to obtain state authorization before offering service in any area of the state. Exempts cable operators that are currently operating under the authority of a municipal franchise.

Imposes a build-out requirement, under which a holder of state authorization to provide cable service or video service that controls more than 50% of the market within a geographic area must extend its system at no additional charge to any potential subscriber who requests it if the same geographic area contains at least 250 homes within 4,000 feet of the provider's nearest remote terminal and service is not available from another cable service provider or video service provider.

Requires competitive cable service providers and competitive video service providers to carry public, educational, and governmental (PEG) programming for any municipality that requests it, on the same basis as may be currently offered by the incumbent cable operator, within 6 months after the request. Requires incumbent cable operators and competitive cable service and video service providers to cooperate on interconnection for PEG programming. Prohibits advertising or branding by cable providers on PEG channels, and requires cable operators and video service providers to carry competitors' advertisements on non-PEG channels.

Requires competitive cable service providers and competitive video service providers to pay a fee to municipalities in which they operate, upon request. Caps the fee at 5% of gross revenues or the percentage currently paid by the incumbent cable operator, whichever is less. Upon request of a municipality, directs the PUC to hire an independent auditor to verify the accuracy of calculation of the fee, with

the cost of such audit to be borne by the requesting municipality, and with the operator and the municipality to each bear their own expenses associated with the audit.

Prohibits a municipality from discriminating among cable service providers or video service providers with respect to rights-of-way, pole attachment, and building access. Prohibits redlining of customers by competitive cable service operators or competitive video service providers.

Gives enforcement authority exclusively to the courts.

States that this act is intended to be consistent with existing federal law. Contains severability provisions.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** 40-15-401 (1) (a), Colorado Revised Statutes, is
3 amended to read:

4 **40-15-401. Services, products, and providers exempt from**
5 **regulation.** (1) The following products, services, and providers are
6 exempt from regulation under this article or under the "Public Utilities
7 Law" of the state of Colorado:

8 (a) EXCEPT AS OTHERWISE PROVIDED IN PART 6 OF THIS ARTICLE,
9 cable services as defined by section 602 (5) of the federal "Cable
10 Franchise Policy and Communications Act of 1984";

11 **SECTION 2.** Article 15 of title 40, Colorado Revised Statutes, is
12 amended BY THE ADDITION OF A NEW PART to read:

13 PART 6

14 CABLE TELEVISION SERVICES

15 **40-15-601. Short title.** THIS PART 6 SHALL BE KNOWN AND MAY
16 BE CITED AS THE "COLORADO CONSUMER CABLE ACT".

17 **40-15-602. Legislative declaration.** (1) THE GENERAL
18 ASSEMBLY FINDS, DETERMINES, AND DECLARES THAT IT IS THE POLICY OF
19 THIS STATE TO PROMOTE FAIR COMPETITION, CONSUMER CHOICE, AND

1 INVESTMENT IN NEW COMMUNICATIONS AND CABLE TELEVISION
2 INFRASTRUCTURE, INCLUDING FIBER OPTIC AND INTERNET PROTOCOL
3 TECHNOLOGIES.

4 (2) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT:

5 (a) THERE IS A NEED FOR STATEWIDE UNIFORMITY IN THE
6 REGULATION OF PRIVATE ENTITIES THAT PROVIDE CABLE TELEVISION
7 SERVICE IN COMPETITION WITH INCUMBENT CABLE OPERATORS;

8 (b) STATEWIDE UNIFORMITY IN THE REGULATION OF COMPETITIVE
9 CABLE TELEVISION SERVICE PROVIDERS WILL PROMOTE FREE AND UNIFORM
10 ACCESS TO VIDEO MARKETS;

11 (c) TECHNOLOGICAL CONVERGENCE AND THE GLOBALIZATION OF
12 COMMUNICATIONS NETWORKS HAS GREATLY INCREASED THE NEED FOR
13 UNIFORMITY OF REGULATION IN COMPETITIVE CABLE TELEVISION
14 MARKETS;

15 (d) MUNICIPAL ORDINANCES, RULES, AND OTHER REGULATIONS
16 GOVERNING THE FRANCHISE REQUIREMENTS FOR THE PROVISION OF CABLE
17 TELEVISION SERVICE IMPEDE OR PROHIBIT COMPETITIVE ENTRY INTO
18 CABLE TELEVISION MARKETS;

19 (e) MUNICIPAL ORDINANCES, RULES, AND OTHER REGULATIONS
20 GOVERNING THE FRANCHISE REQUIREMENTS FOR THE PROVISION OF CABLE
21 TELEVISION SERVICE BY COMPETITIVE ENTRANTS AFFECT PERSONS LIVING
22 OUTSIDE THE MUNICIPALITY BECAUSE THE INVESTMENT DECISIONS
23 RELATING TO THE PROVISION OF CABLE TELEVISION SERVICE SPAN
24 MUNICIPAL BOUNDARIES; AND

25 (f) REGULATING THE PROVISION OF COMPETITIVE CABLE
26 TELEVISION SERVICE IN ORDER TO PROMOTE COMPETITION AND
27 INVESTMENT IN CABLE TELEVISION INFRASTRUCTURE IS A MATTER OF

1 STATEWIDE CONCERN.

2 **40-15-603. Definitions.** AS USED IN THIS PART 6, UNLESS THE
3 CONTEXT OTHERWISE REQUIRES:

4 (1) "CABLE OPERATOR" SHALL HAVE THE MEANING SET FORTH IN
5 47 U.S.C. SEC. 522 (5).

6 (2) "CABLE SERVICE" SHALL HAVE THE MEANING SET FORTH IN 47
7 U.S.C. SEC. 522 (6).

8 (3) "CABLE SYSTEM" SHALL HAVE THE MEANING SET FORTH IN 47
9 U.S.C. SEC. 522 (7).

10 (4) "COMPETITIVE CABLE SERVICE PROVIDER" MEANS AN ENTITY
11 AUTHORIZED BY THIS PART 6 TO PROVIDE CABLE SERVICE OVER A CABLE
12 SYSTEM; EXCEPT THAT THE TERM DOES NOT INCLUDE AN INCUMBENT
13 CABLE OPERATOR THAT, AS OF JULY 1, 2007, WAS PROVIDING SERVICE IN
14 THE AREA TO BE SERVED BY THE COMPETITIVE CABLE SERVICE PROVIDER.

15 (5) "COMPETITIVE CABLE SERVICE PROVIDER FEE" MEANS THE
16 AMOUNT PAID BY A COMPETITIVE CABLE SERVICE PROVIDER PURSUANT TO
17 SECTION 40-15-605.

18 (6) "COMPETITIVE VIDEO SERVICE PROVIDER" MEANS AN ENTITY
19 AUTHORIZED BY THIS PART 6 TO PROVIDE VIDEO SERVICE; EXCEPT THAT
20 THE TERM DOES NOT INCLUDE A CABLE OPERATOR. A COMPETITIVE VIDEO
21 SERVICE PROVIDER SHALL NOT BE CONSIDERED A CABLE OPERATOR, AND
22 THE FACILITIES OF A COMPETITIVE VIDEO SERVICE PROVIDER SHALL NOT BE
23 CONSIDERED A CABLE SYSTEM.

24 (7) "COMPETITIVE VIDEO SERVICE PROVIDER FEE" MEANS THE
25 AMOUNT PAID BY A COMPETITIVE VIDEO SERVICE PROVIDER PURSUANT TO
26 SECTION 40-15-605.

27 (8) "FRANCHISE" MEANS AN INITIAL AUTHORIZATION, OR RENEWAL

1 OF AN AUTHORIZATION, REGARDLESS OF WHETHER THE AUTHORIZATION IS
2 DESIGNATED AS A FRANCHISE, PERMIT, LICENSE, RESOLUTION, CONTRACT,
3 CERTIFICATE, AGREEMENT, OR OTHERWISE, THAT AUTHORIZES THE
4 CONSTRUCTION AND OPERATION OF A CABLE SYSTEM OR VIDEO SERVICE
5 PROVIDER'S NETWORK IN PUBLIC RIGHTS-OF-WAY UNDER THE CONTROL OF
6 A LOCAL GOVERNMENT.

7 (9) "INCUMBENT CABLE OPERATOR" MEANS THE CABLE SERVICE
8 PROVIDER SERVING THE LARGEST NUMBER OF CABLE TELEVISION
9 SUBSCRIBERS IN A PARTICULAR LOCAL FRANCHISE AREA ON JULY 1, 2007.

10 (10) "LOCAL GOVERNMENT" MEANS A TOWN, CITY, COUNTY, CITY
11 AND COUNTY, OR OTHER POLITICAL SUBDIVISION OF THIS STATE,
12 INCLUDING, WITHOUT LIMITATION, A HOME RULE MUNICIPALITY.

13 (11) "PEG" MEANS NONCOMMERCIAL PUBLIC, EDUCATIONAL, AND
14 GOVERNMENTAL PROGRAMMING.

15 (12) "PUBLIC RIGHT-OF-WAY" MEANS THE AREA ON, BELOW, OR
16 ABOVE A PUBLIC ROADWAY, HIGHWAY, STREET, PUBLIC SIDEWALK, ALLEY,
17 WATERWAY, OR UTILITY EASEMENT DEDICATED FOR COMPATIBLE USES.

18 (13) "VIDEO PROGRAMMING" MEANS PROGRAMMING PROVIDED BY,
19 OR GENERALLY CONSIDERED COMPARABLE TO PROGRAMMING PROVIDED
20 BY, A TELEVISION BROADCAST STATION AS DEFINED IN 47 U.S.C. SEC. 522
21 (20).

22 (14) "VIDEO SERVICE" MEANS VIDEO PROGRAMMING SERVICES
23 PROVIDED THROUGH WIRELINE FACILITIES LOCATED AT LEAST IN PART IN
24 THE PUBLIC RIGHT-OF-WAY WITHOUT REGARD TO DELIVERY TECHNOLOGY,
25 INCLUDING INTERNET PROTOCOL TECHNOLOGY. "VIDEO SERVICE" DOES
26 NOT INCLUDE ANY VIDEO PROGRAMMING PROVIDED BY A COMMERCIAL
27 MOBILE SERVICE PROVIDER, AS DEFINED IN 47 U.S.C. SEC. 332 (d), OR

1 CABLE SERVICE PROVIDED BY A COMPETITIVE CABLE SERVICE PROVIDER.

2 **40-15-604. State authorization to provide cable service or video**
3 **service - application - fees - rules - obligations of provider. (1) A**

4 COMPETITIVE CABLE SERVICE PROVIDER OR COMPETITIVE VIDEO SERVICE
5 PROVIDER SEEKING TO PROVIDE CABLE SERVICE OR VIDEO SERVICE IN
6 COLORADO AFTER JULY 1, 2007, SHALL FILE AN APPLICATION FOR
7 AUTHORIZATION WITH THE COMMISSION AS REQUIRED BY THIS SECTION.

8 (2) THE COMMISSION MAY CHARGE A FEE FOR THE FILING OF AN
9 APPLICATION UNDER THIS SECTION. THE FEE SHALL BE ESTABLISHED BY
10 THE COMMISSION BY RULE, IN AN AMOUNT SUFFICIENT TO APPROXIMATE
11 THE COMMISSION'S DIRECT AND INDIRECT COSTS OF PROCESSING AND
12 REVIEWING THE APPLICATION. THE COMMISSION SHALL TRANSFER THE
13 FEES COLLECTED PURSUANT TO THIS SECTION TO THE STATE TREASURER,
14 WHO SHALL DEPOSIT THEM IN THE PUBLIC UTILITIES COMMISSION FIXED
15 UTILITY FUND CREATED IN SECTION 40-2-114.

16 (3) THE COMMISSION SHALL ISSUE AN AUTHORIZATION PERMITTING
17 A COMPETITIVE CABLE SERVICE PROVIDER TO PROVIDE CABLE SERVICE OR
18 A COMPETITIVE VIDEO SERVICE PROVIDER TO PROVIDE VIDEO SERVICE IN
19 THE STATE OF COLORADO WITHIN THIRTY CALENDAR DAYS AFTER RECEIPT
20 OF A COMPLETED APPLICATION FOR AUTHORIZATION. THE APPLICATION
21 SHALL INCLUDE AN AFFIDAVIT SUBMITTED BY THE PROVIDER AND SIGNED
22 BY AN OFFICER OR GENERAL PARTNER OF THE APPLICANT AFFIRMING THE
23 FOLLOWING:

24 (a) THE LOCATION OF THE PRINCIPAL PLACE OF BUSINESS AND THE
25 NAMES OF THE PRINCIPAL EXECUTIVE OFFICERS OF THE APPLICANT;

26 (b) THAT THE APPLICANT AGREES TO COMPLY WITH ALL
27 APPLICABLE FEDERAL AND STATE LAWS AND REGULATIONS; AND

1 (c) A WRITTEN DESCRIPTION OF THE TOWN, CITY, COUNTY, CITY
2 AND COUNTY, SPECIAL DISTRICT, OR OTHER POLITICAL SUBDIVISION OF THIS
3 STATE TO BE SERVED, IN WHOLE OR IN PART, BY THE APPLICANT, WHICH
4 WRITTEN DESCRIPTION SHALL BE AMENDED BY THE APPLICANT BEFORE THE
5 PROVISION OF SERVICE WITHIN AN AREA NOT DESCRIBED IN A PREVIOUS
6 APPLICATION OR AMENDMENT FILED BY THE APPLICANT. FOR PURPOSES OF
7 THIS PARAGRAPH (c), A MAP OR OTHER GRAPHIC REPRESENTATION MAY
8 SUPPLEMENT, BUT NOT SUBSTITUTE FOR, THE WRITTEN DESCRIPTION.

9 (4) A HOLDER OF A STATE AUTHORIZATION TO PROVIDE CABLE
10 SERVICE OR VIDEO SERVICE WHO SEEKS TO AMEND THE AUTHORIZATION TO
11 INCLUDE ADDITIONAL AREAS TO BE SERVED SHALL FILE AN AMENDED
12 APPLICATION WITH THE COMMISSION THAT REFLECTS THE NEW AREAS TO
13 BE SERVED.

14 (5) THE AUTHORIZATION ISSUED BY THE COMMISSION IS FULLY
15 TRANSFERABLE TO ANY SUCCESSOR IN INTEREST TO THE APPLICANT TO
16 WHICH IT IS INITIALLY GRANTED. A NOTICE OF TRANSFER SHALL BE FILED
17 WITH THE COMMISSION WITHIN THIRTY DAYS AFTER THE COMPLETION OF
18 SUCH TRANSFER.

19 (6) THE AUTHORIZATION ISSUED BY THE COMMISSION MAY BE
20 TERMINATED BY THE COMPETITIVE CABLE SERVICE PROVIDER OR
21 COMPETITIVE VIDEO SERVICE PROVIDER BY SUBMITTING NOTICE TO THE
22 COMMISSION.

23 (7) TO THE EXTENT REQUIRED BY APPLICABLE LAW, ANY CABLE
24 SERVICE OR VIDEO SERVICE AUTHORIZATION GRANTED BY THE COMMISSION
25 UNDER THIS PART 6 SHALL CONSTITUTE A "FRANCHISE" FOR PURPOSES OF
26 47 U.S.C. SEC. 541 (b) (1). TO THE EXTENT REQUIRED FOR PURPOSES OF 47
27 U.S.C. SECS. 521 TO 561, ONLY THE COMMISSION SHALL CONSTITUTE THE

1 EXCLUSIVE "FRANCHISING AUTHORITY" FOR COMPETITIVE CABLE SERVICE
2 PROVIDERS AND COMPETITIVE VIDEO SERVICE PROVIDERS IN THE STATE OF
3 COLORADO.

4 (8) NEITHER THE COMMISSION NOR ANY OTHER STATE AGENCY OR
5 LOCAL GOVERNMENT SHALL:

6 (a) REQUIRE A COMPETITIVE CABLE SERVICE PROVIDER OR
7 COMPETITIVE VIDEO SERVICE PROVIDER TO OBTAIN A SEPARATE
8 FRANCHISE; OR

9 (b) OTHERWISE IMPOSE ANY FEE OR FRANCHISE REQUIREMENT ON
10 ANY COMPETITIVE CABLE SERVICE PROVIDER OR COMPETITIVE VIDEO
11 SERVICE PROVIDER EXCEPT AS PROVIDED IN THIS PART 6. FOR PURPOSES OF
12 THIS PARAGRAPH (b), A FRANCHISE REQUIREMENT INCLUDES, WITHOUT
13 LIMITATION, ANY PROVISION THAT:

14 (I) REGULATES THE RATES CHARGED BY COMPETITIVE CABLE
15 SERVICE PROVIDERS OR COMPETITIVE VIDEO SERVICE PROVIDERS;

16 (II) REQUIRES COMPETITIVE CABLE SERVICE PROVIDERS OR
17 COMPETITIVE VIDEO SERVICE PROVIDERS TO SATISFY ANY BUILD-OUT
18 REQUIREMENTS OR DEPLOY ANY FACILITIES OR EQUIPMENT;

19 (III) REQUIRES A FRANCHISE TO BE APPROVED BY A VOTE OF THE
20 REGISTERED ELECTORS; OR

21 (IV) REQUIRES A COMPETITIVE CABLE SERVICE PROVIDER OR A
22 COMPETITIVE VIDEO SERVICE PROVIDER TO MEET CUSTOMER SERVICE
23 REQUIREMENTS.

24 (9) NOTHING IN THIS PART 6 IS INTENDED TO ABROGATE, NULLIFY,
25 OR ADVERSELY AFFECT ANY FRANCHISE OR OTHER CONTRACTUAL RIGHTS,
26 DUTIES, OR OBLIGATIONS EXISTING AND INCURRED BY A CABLE OPERATOR
27 BEFORE JULY 1, 2007. A CABLE OPERATOR WITH AN EXISTING FRANCHISE

1 WITH A LOCAL GOVERNMENT TO PROVIDE CABLE SERVICE IN THE STATE AS
2 OF JULY 1, 2007, IS NOT ELIGIBLE TO OBTAIN A STATE AUTHORIZATION TO
3 PROVIDE CABLE SERVICE OR VIDEO SERVICE FOR ANY AREA FOR WHICH THE
4 CABLE OPERATOR HAS AN EXISTING FRANCHISE AGREEMENT WITH SUCH
5 LOCAL GOVERNMENT, OR ANY PORTION THEREOF, UNTIL THE EXPIRATION
6 DATE OF THE EXISTING FRANCHISE AGREEMENT.

7 (10) WHENEVER THE HOLDER OF A STATE AUTHORIZATION
8 RECEIVES A REQUEST FOR SERVICE FROM A POTENTIAL SUBSCRIBER WITHIN
9 ITS AUTHORIZED SERVICE AREA AND THERE ARE AT LEAST TWO HUNDRED
10 FIFTY DWELLING UNITS LOCATED WITHIN FOUR THOUSAND FEET OF A
11 REMOTE TERMINAL THAT DO NOT HAVE CABLE SERVICE OR VIDEO SERVICE
12 AVAILABLE FROM ANOTHER CABLE SERVICE PROVIDER OR VIDEO SERVICE
13 PROVIDER, THE HOLDER OF A STATE AUTHORIZATION SHALL EXTEND ITS
14 SYSTEM TO SUCH POTENTIAL SUBSCRIBER AT NO COST TO THE POTENTIAL
15 SUBSCRIBER; EXCEPT THAT THIS SUBSECTION (10) SHALL ONLY APPLY
16 AFTER THE FIRST DATE ON WHICH THE HOLDER OF A STATE AUTHORIZATION
17 IS PROVIDING CABLE SERVICE OR VIDEO SERVICE TO MORE THAN ONE-HALF
18 OF ALL SUBSCRIBERS RECEIVING CABLE SERVICE OR VIDEO SERVICE FROM
19 BOTH THE HOLDER OF A STATE AUTHORIZATION AND ANY OTHER
20 PROVIDERS OF CABLE SERVICE OR VIDEO SERVICE WITHIN THE AUTHORIZED
21 AREA.

22 (11) (a) NOT LATER THAN ONE HUNDRED EIGHTY DAYS AFTER A
23 REQUEST BY A LOCAL GOVERNMENT FOR AN AUTHORIZED SERVICE AREA IN
24 WHICH A COMPETITIVE CABLE SERVICE PROVIDER IS PROVIDING CABLE
25 SERVICE OR A COMPETITIVE VIDEO SERVICE PROVIDER IS PROVIDING VIDEO
26 SERVICE, THE HOLDER OF A STATE AUTHORIZATION TO PROVIDE CABLE
27 SERVICE OR VIDEO SERVICE SHALL DESIGNATE A SUFFICIENT AMOUNT OF

1 CAPACITY ON ITS COMMUNICATIONS NETWORK TO ALLOW THE PROVISION
2 OF CHANNELS OF PEG PROGRAMMING COMPARABLE TO THE NUMBER OF
3 CHANNELS PROVIDED BY THE INCUMBENT CABLE OPERATOR.

4 (b) IN ORDER TO ENSURE THAT ALL PEG CONTENT IS
5 COMPETITIVELY NEUTRAL TO ALL CABLE OPERATORS AND VIDEO SERVICE
6 PROVIDERS, ALL CABLE OPERATORS AND VIDEO SERVICE PROVIDERS,
7 INCLUDING THE INCUMBENT CABLE OPERATOR, SHALL BE PROHIBITED FROM
8 PLACING LOGOS, ADVERTISEMENTS, PROMOTIONS, OR ANY OTHER
9 MARKETING MATERIALS THAT WOULD HAVE THE EFFECT OF FAVORING OR
10 PROMOTING ANY CABLE OPERATOR OR VIDEO SERVICE PROVIDER OVER
11 ANOTHER ON ANY CHANNEL SPACE DESIGNATED FOR PEG PROGRAMMING.

12 (c) THE OPERATION OF A PEG CHANNEL PURSUANT TO THIS
13 SUBSECTION (11) SHALL BE THE RESPONSIBILITY OF THE LOCAL
14 GOVERNMENT RECEIVING THE BENEFIT OF THE CHANNEL, AND THE HOLDER
15 OF A STATE AUTHORIZATION TO PROVIDE CABLE SERVICE OR VIDEO SERVICE
16 BEARS ONLY THE RESPONSIBILITY FOR THE TRANSMISSION OF THE
17 CHANNEL. THE LOCAL GOVERNMENT SHALL ENSURE THAT ALL
18 TRANSMISSIONS, CONTENT, OR PROGRAMMING TO BE TRANSMITTED BY A
19 HOLDER OF A STATE AUTHORIZATION TO PROVIDE CABLE SERVICE OR VIDEO
20 SERVICE ARE PROVIDED OR SUBMITTED TO THE COMPETITIVE CABLE
21 SERVICE PROVIDER OR COMPETITIVE VIDEO SERVICE PROVIDER IN A
22 MANNER OR FORM THAT IS CAPABLE OF BEING ACCEPTED AND
23 TRANSMITTED BY A PROVIDER, WITHOUT A REQUIREMENT FOR ADDITIONAL
24 ALTERATION OR CHANGE IN THE CONTENT BY THE PROVIDER, OVER THE
25 PARTICULAR NETWORK OF THE COMPETITIVE CABLE SERVICE PROVIDER OR
26 COMPETITIVE VIDEO SERVICE PROVIDER, WHICH IS COMPATIBLE WITH THE
27 TECHNOLOGY OR PROTOCOL UTILIZED BY THE COMPETITIVE CABLE SERVICE

1 PROVIDER OR COMPETITIVE VIDEO SERVICE PROVIDER TO DELIVER
2 SERVICES.

3 (12) A PROVIDER OF CABLE SERVICE OR VIDEO SERVICE MAY NOT
4 REFUSE TO CARRY ADVERTISING REQUESTED BY ANY OTHER PROVIDER OF
5 CABLE SERVICE OR VIDEO SERVICE ON ADVERTISING SPACE OWNED AND
6 CONTROLLED BY THE PROVIDER OF THE CABLE SERVICE OR VIDEO SERVICE.
7 TO ENSURE THAT THE INTENT OF THIS SUBSECTION (12) IS MET, A PROVIDER
8 OF CABLE SERVICE OR VIDEO SERVICE SHALL ENSURE THAT AT LEAST THREE
9 PERCENT OF ALL ADVERTISING SPACE OWNED AND CONTROLLED BY THE
10 CABLE OPERATOR OR COMPETITIVE VIDEO SERVICE PROVIDER IS MADE
11 AVAILABLE TO ALL CABLE OPERATORS AND COMPETITIVE VIDEO SERVICE
12 PROVIDERS.

13 (13) WHERE TECHNICALLY FEASIBLE, THE HOLDER OF A STATE
14 AUTHORIZATION TO PROVIDE CABLE SERVICE OR VIDEO SERVICE AND AN
15 INCUMBENT CABLE OPERATOR SHALL USE REASONABLE EFFORTS TO
16 INTERCONNECT THEIR CABLE SYSTEMS OR VIDEO SYSTEMS FOR THE
17 PURPOSE OF PROVIDING PEG PROGRAMMING. INTERCONNECTION MAY BE
18 ACCOMPLISHED BY DIRECT CABLE, MICROWAVE LINK, SATELLITE, OR OTHER
19 REASONABLE METHOD OF CONNECTION. HOLDERS OF A STATE
20 AUTHORIZATION TO PROVIDE CABLE SERVICE OR VIDEO SERVICE AND
21 INCUMBENT CABLE OPERATORS SHALL NEGOTIATE IN GOOD FAITH, AND
22 INCUMBENT CABLE OPERATORS MAY NOT WITHHOLD INTERCONNECTION OF
23 PEG CHANNELS.

24 (14) IF AN INCUMBENT CABLE OPERATOR COLLECTS FOR AND
25 REMITS A MONTHLY CHARGE TO A LOCAL GOVERNMENT FOR PEG
26 CHANNELS, ANY SUBSEQUENT HOLDER OF A STATE AUTHORIZATION TO
27 PROVIDE CABLE SERVICE OR VIDEO SERVICE IN AN AUTHORIZED SERVICE

1 AREA WITHIN THE JURISDICTION OF THE LOCAL GOVERNMENT SHALL PAY
2 THIS MONTHLY CHARGE AT THE SAME RATE. ALL FEES COLLECTED
3 PURSUANT TO THIS SUBSECTION (14) SHALL BE USED ONLY FOR THE
4 SUPPORT OF PEG CHANNELS.

5 (15) COMPETITIVE CABLE SERVICE PROVIDERS AND COMPETITIVE
6 VIDEO SERVICE PROVIDERS SHALL COMPLY WITH CUSTOMER SERVICE
7 REQUIREMENTS CONSISTENT WITH, BUT NOT TO EXCEED, THE
8 REQUIREMENTS OF 47 CFR 76.309 (c), AS AMENDED FROM TIME TO TIME,
9 AND EMERGENCY ALERT REQUIREMENTS ESTABLISHED BY THE FEDERAL
10 COMMUNICATIONS COMMISSION. SUCH REQUIREMENTS SHALL BE
11 APPLICABLE TO ALL COMPETITIVE CABLE SERVICE PROVIDERS AND
12 COMPETITIVE VIDEO SERVICE PROVIDERS ON A COMPETITIVELY NEUTRAL
13 BASIS.

14 (16) EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS PART
15 6, A COURT OF COMPETENT JURISDICTION SHALL HAVE EXCLUSIVE
16 JURISDICTION TO ENFORCE ANY REQUIREMENT UNDER THIS PART 6.

17 (17) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS (1) TO (15)
18 OF THIS SECTION, COMPETITIVE CABLE SERVICE PROVIDERS AND
19 COMPETITIVE VIDEO SERVICE PROVIDERS SHALL ENJOY THE SAME RIGHTS
20 UNDER THE LAW OF THIS STATE AS INCUMBENT CABLE OPERATORS AND
21 OTHER PROVIDERS OF VIDEO PROGRAMMING.

22 **40-15-605. Fees - competitive cable service provider fee -**
23 **competitive video service provider fee.** (1) A COMPETITIVE CABLE
24 SERVICE PROVIDER OR COMPETITIVE VIDEO SERVICE PROVIDER SHALL
25 PROVIDE NOTICE TO THE APPROPRIATE LOCAL GOVERNMENT WITH
26 JURISDICTION OVER THE PUBLIC RIGHT-OF-WAY IN WHICH THE COMPETITIVE
27 CABLE SERVICE PROVIDER OR COMPETITIVE VIDEO SERVICE PROVIDER

1 BEGINS TO OFFER CABLE SERVICE OR VIDEO SERVICE.

2 (2) IN ANY LOCALITY IN WHICH A COMPETITIVE CABLE SERVICE
3 PROVIDER OFFERS CABLE SERVICE OR A COMPETITIVE VIDEO SERVICE
4 PROVIDER OFFERS VIDEO SERVICE, THE COMPETITIVE CABLE SERVICE
5 PROVIDER OR COMPETITIVE VIDEO SERVICE PROVIDER SHALL CALCULATE
6 AND PAY THE COMPETITIVE CABLE SERVICE PROVIDER FEE OR COMPETITIVE
7 VIDEO SERVICE PROVIDER FEE TO THE APPROPRIATE LOCAL GOVERNMENT
8 WITH JURISDICTION OVER THE PUBLIC RIGHT-OF-WAY, UPON THE LOCAL
9 GOVERNMENT'S WRITTEN REQUEST. IF THE LOCAL GOVERNMENT MAKES
10 SUCH A REQUEST, THE COMPETITIVE CABLE SERVICE PROVIDER FEE OR
11 COMPETITIVE VIDEO SERVICE PROVIDER FEE SHALL BE DUE ON A
12 QUARTERLY BASIS, FORTY-FIVE DAYS AFTER THE CLOSE OF THE QUARTER,
13 AND SHALL BE CALCULATED AS A PERCENTAGE OF GROSS REVENUES AS
14 DEFINED IN SUBSECTION (4) OF THIS SECTION. THE LOCAL GOVERNMENT
15 SHALL NOT DEMAND ANY ADDITIONAL FEES OR CHARGES FROM THE
16 COMPETITIVE CABLE SERVICE PROVIDER OR COMPETITIVE VIDEO SERVICE
17 PROVIDER EXCEPT AS PROVIDED BY THIS PART 6, AND SHALL NOT DEMAND
18 THE USE OF ANY OTHER CALCULATION METHOD.

19 (3) THE LOCAL GOVERNMENT SHALL SET THE PERCENTAGE TO BE
20 APPLIED AGAINST GROSS REVENUES PURSUANT TO SUBSECTION (1) OF THIS
21 SECTION, WHICH SHALL BE EQUAL TO THE PERCENTAGE PAID BY THE
22 INCUMBENT CABLE OPERATOR OR FIVE PERCENT, WHICHEVER IS LESS. THE
23 LOCAL GOVERNMENT'S NOTICE TO THE COMPETITIVE CABLE SERVICE
24 PROVIDER SHALL IDENTIFY THE PERCENTAGE.

25 (4) (a) FOR PURPOSES OF THIS SECTION, "GROSS REVENUES" MEANS
26 ALL CONSIDERATION OF ANY KIND OR NATURE, INCLUDING, WITHOUT
27 LIMITATION, CASH, CREDITS, PROPERTY, AND IN-KIND CONTRIBUTIONS OF

1 SERVICES OR GOODS RECEIVED FROM SUBSCRIBERS FOR THE PROVISION OF
2 CABLE SERVICE OVER A CABLE SYSTEM BY A COMPETITIVE CABLE
3 PROVIDER OR VIDEO SERVICE BY A COMPETITIVE VIDEO SERVICE PROVIDER
4 WITHIN THE LOCAL GOVERNMENT'S JURISDICTION. "GROSS REVENUES"
5 INCLUDE, WITHOUT LIMITATION:

- 6 (I) MONTHLY FEES CHARGED SUBSCRIBERS FOR BASIC SERVICE;
- 7 (II) ADDITIONAL CHARGES FOR ANY EXPANDED TIERS OF CABLE
8 SERVICE OR VIDEO SERVICE;
- 9 (III) CHARGES OR FEES FOR OPTIONAL PREMIUM SERVICES;
- 10 (IV) INSTALLATION, DISCONNECTION, RECONNECTION, AND
11 CHANGE-IN-SERVICE FEES;
- 12 (V) LEASED ACCESS CHANNEL FEES;
- 13 (VI) REMOTE CONTROL RENTAL FEES;
- 14 (VII) ALL CABLE SERVICE LEASE PAYMENTS FROM THE CABLE
15 SYSTEM OR VIDEO SERVICE LEASE PAYMENTS FROM THE VIDEO SYSTEM;
- 16 (VIII) LATE FEES AND ADMINISTRATIVE FEES;
- 17 (IX) FEES, PAYMENTS, OR OTHER CONSIDERATION RECEIVED BY
18 THE PROVIDER FROM PROGRAMMERS FOR CARRIAGE OF PROGRAMMING ON
19 THE CABLE SYSTEM OR VIDEO SYSTEM;
- 20 (X) REVENUES FROM RENTALS OR SALES OF CONVERTERS OR OTHER
21 SYSTEM EQUIPMENT;
- 22 (XI) ADVERTISING REVENUES;
- 23 (XII) LAUNCH FEES;
- 24 (XIII) THE FAIR MARKET VALUE OF CONSIDERATION RECEIVED BY
25 THE PROVIDER FOR USE OF THE CABLE SYSTEM TO PROVIDE CABLE SERVICE
26 OR THE VIDEO SYSTEM TO PROVIDE VIDEO SERVICE;
- 27 (XIV) REVENUES FROM PROGRAM GUIDES;

1 (XV) REVENUES FROM DATA TRANSMISSIONS, TO THE EXTENT
2 SUCH TRANSMISSIONS ARE CONSIDERED CABLE SERVICES UNDER FEDERAL
3 LAW;

4 (XVI) THE COMPETITIVE CABLE SERVICE PROVIDER FEE OR
5 COMPETITIVE VIDEO SERVICE PROVIDER FEE SPECIFIED IN THIS SECTION;

6 (XVII) ADDITIONAL OUTLET FEES;

7 (XVIII) REVENUE FROM CABLE INTERNET SERVICE, TO THE EXTENT
8 THIS SERVICE IS CONSIDERED A CABLE SERVICE UNDER FEDERAL LAW;

9 (XIX) REVENUE FROM INTERACTIVE SERVICES, TO THE EXTENT
10 THEY ARE CONSIDERED CABLE SERVICES UNDER FEDERAL LAW;

11 (XX) REVENUE FROM THE SALE OR CARRIAGE OF OTHER CABLE
12 SERVICES OR VIDEO SERVICES; AND

13 (XXI) REVENUE FROM HOME SHOPPING AND BANK-AT-HOME
14 CHANNELS AND OTHER REVENUE-SHARING ARRANGEMENTS.

15 (b) "GROSS REVENUES" DOES NOT INCLUDE:

16 (I) REVENUES NOT ACTUALLY RECEIVED, EVEN IF BILLED, SUCH AS
17 BAD DEBT;

18 (II) CAPITAL CONTRIBUTIONS SPECIFIED IN SECTION 40-15-604 (14);

19 (III) ANY TAX OF GENERAL APPLICABILITY IMPOSED UPON THE
20 COMPETITIVE CABLE SERVICE PROVIDER OR COMPETITIVE VIDEO SERVICE
21 PROVIDER OR UPON SUBSCRIBERS BY A CITY, STATE, FEDERAL, OR OTHER
22 GOVERNMENTAL ENTITY AND REQUIRED TO BE COLLECTED BY THE
23 COMPETITIVE CABLE SERVICE PROVIDER OR COMPETITIVE VIDEO SERVICE
24 PROVIDER AND REMITTED TO THE TAXING ENTITY, INCLUDING, WITHOUT
25 LIMITATION, SALES AND USE TAX, GROSS RECEIPTS TAX, EXCISE TAX,
26 UTILITY USERS TAX, PUBLIC SERVICE TAX, AND COMMUNICATION TAXES;
27 OR

1 (IV) CHARGES, OTHER THAN THOSE DESCRIBED IN THIS SUBSECTION
2 (4), THAT ARE AGGREGATED OR BUNDLED WITH AMOUNTS BILLED TO
3 SUBSCRIBERS.

4 (5) AT THE REQUEST OF A LOCAL GOVERNMENT, BUT NO MORE
5 THAN ONCE PER YEAR, THE COMMISSION MAY RETAIN AN INDEPENDENT
6 AUDITOR TO PERFORM REASONABLE AUDITS OF THE COMPETITIVE CABLE
7 SERVICE PROVIDER'S OR COMPETITIVE VIDEO SERVICE PROVIDER'S
8 CALCULATION OF THE COMPETITIVE CABLE SERVICE PROVIDER FEE OR
9 COMPETITIVE VIDEO SERVICE PROVIDER FEE. THE REQUESTING LOCAL
10 GOVERNMENT AND THE COMPETITIVE CABLE SERVICE PROVIDER OR
11 COMPETITIVE VIDEO SERVICE PROVIDER SHALL EACH BEAR THEIR OWN
12 COSTS ASSOCIATED WITH SUCH AN AUDIT. THE REQUESTING LOCAL
13 GOVERNMENT SHALL ALSO BEAR THE COMMISSION'S COSTS, INCLUDING,
14 BUT NOT LIMITED TO, THE COMMISSION'S COSTS TO RETAIN AN
15 INDEPENDENT AUDITOR TO PERFORM AN AUDIT.

16 (6) A COMPETITIVE CABLE SERVICE PROVIDER OR COMPETITIVE
17 VIDEO SERVICE PROVIDER MAY IDENTIFY AND COLLECT THE AMOUNT OF
18 THE COMPETITIVE CABLE SERVICE PROVIDER FEE OR COMPETITIVE VIDEO
19 SERVICE PROVIDER FEE AS A SEPARATE LINE ITEM ON THE REGULAR BILL OF
20 EACH SUBSCRIBER.

21 **40-15-606. Nondiscrimination by local governments.** (1) A
22 LOCAL GOVERNMENT SHALL ALLOW THE HOLDER OF A STATE
23 AUTHORIZATION TO PROVIDE CABLE SERVICE OR VIDEO SERVICE TO
24 INSTALL, CONSTRUCT, AND MAINTAIN A COMMUNICATIONS NETWORK
25 WITHIN PUBLIC RIGHTS-OF-WAY AND SHALL PROVIDE THE HOLDER OF A
26 STATE AUTHORIZATION TO PROVIDE CABLE SERVICE OR VIDEO SERVICE
27 WITH OPEN, COMPARABLE, NONDISCRIMINATORY, AND COMPETITIVELY

1 NEUTRAL ACCESS TO THE PUBLIC RIGHTS-OF-WAY.

2 (2) A LOCAL GOVERNMENT SHALL NOT DISCRIMINATE AMONG
3 PROVIDERS OF CABLE SERVICE OR VIDEO SERVICE REGARDING, WITHOUT
4 LIMITATION:

5 (a) THE AUTHORIZATION OR PLACEMENT OF A COMMUNICATIONS
6 NETWORK IN PUBLIC RIGHTS-OF-WAY;

7 (b) ACCESS TO A BUILDING; OR

8 (c) A MUNICIPAL UTILITY POLE ATTACHMENT TERM.

9 (3) A LOCAL GOVERNMENT MAY IMPOSE ON A COMPETITIVE CABLE
10 SERVICE PROVIDER OR COMPETITIVE VIDEO SERVICE PROVIDER A PERMIT
11 FEE ONLY TO THE EXTENT IT IMPOSES SUCH A FEE ON INCUMBENT CABLE
12 OPERATORS. ANY SUCH FEE SHALL NOT EXCEED THE ACTUAL, DIRECT
13 COSTS INCURRED BY THE LOCAL GOVERNMENT FOR ISSUING THE RELEVANT
14 PERMIT. IN NO EVENT MAY A FEE UNDER THIS SUBSECTION (3) BE LEVIED:

15 (a) IF THE COMPETITIVE CABLE SERVICE PROVIDER OR COMPETITIVE
16 VIDEO SERVICE PROVIDER ALREADY HAS PAID A PERMIT FEE OF ANY KIND
17 IN CONNECTION WITH THE SAME ACTIVITY THAT WOULD OTHERWISE BE
18 COVERED BY THE PERMIT FEE UNDER THIS SUBSECTION (3) OR IS
19 OTHERWISE AUTHORIZED BY LAW OR CONTRACT TO PLACE THE FACILITIES
20 USED BY THE COMPETITIVE CABLE SERVICE PROVIDER OR COMPETITIVE
21 VIDEO SERVICE PROVIDER IN A PUBLIC RIGHT-OF-WAY; OR

22 (b) FOR GENERAL REVENUE PURPOSES.

23 **40-15-607. Discrimination prohibited.** A COMPETITIVE CABLE
24 SERVICE PROVIDER OR COMPETITIVE VIDEO SERVICE PROVIDER THAT HAS
25 BEEN GRANTED A STATE AUTHORIZATION TO PROVIDE CABLE SERVICE OR
26 VIDEO SERVICE SHALL COMPLY WITH THE PROVISIONS SET FORTH IN 47
27 U.S.C. SEC. 541 (a) (3) RELATING TO EQUAL ACCESS TO SERVICE, AND, IN

1 ADDITION, SHALL NOT DENY SERVICE TO ANY GROUP OF POTENTIAL
2 RESIDENTIAL SUBSCRIBERS BASED ON INCOME, RACE, OR NATIONAL ORIGIN.

3 **40-15-608. Applicability of other law - severability.** (1) THE
4 PROVISIONS OF THIS PART 6 ARE INTENDED TO BE CONSISTENT WITH THE
5 FEDERAL "CABLE COMMUNICATIONS POLICY ACT OF 1984", 47 U.S.C. SEC.
6 521 ET SEQ., AS AMENDED.

7 (2) EXCEPT AS OTHERWISE PROVIDED IN THIS PART 6, NOTHING IN
8 THIS PART 6 SHALL BE CONSTRUED TO PREVENT A COMPETITIVE CABLE
9 SERVICE PROVIDER, A COMPETITIVE VIDEO SERVICE PROVIDER, A CABLE
10 OPERATOR, OR A LOCAL GOVERNMENT FROM SEEKING CLARIFICATION OF
11 ITS RIGHTS AND OBLIGATIONS UNDER FEDERAL LAW OR TO EXERCISE ANY
12 RIGHT OR AUTHORITY UNDER FEDERAL OR STATE LAW.

13 (3) IF ANY PROVISION OF THIS PART 6 OR THE APPLICATION
14 THEREOF TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID FOR ANY
15 REASON IN A COURT OF COMPETENT JURISDICTION, THE INVALIDITY SHALL
16 NOT AFFECT OTHER PROVISIONS OR ANY OTHER APPLICATION OF THIS PART
17 6 WHICH CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR
18 APPLICATION, AND FOR THIS PURPOSE THE PROVISIONS OF THIS PART 6 ARE
19 HEREBY DECLARED SEVERABLE.

20 **SECTION 3. Effective date.** This act shall take effect July 1,
21 2007.

22 **SECTION 4. Safety clause.** The general assembly hereby finds,
23 determines, and declares that this act is necessary for the immediate
24 preservation of the public peace, health, and safety.