

First Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 05-0176.01 Gregg Fraser

SENATE BILL 05-152

SENATE SPONSORSHIP

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HOUSE SPONSORSHIP

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Senate Committees

House Committees

Local Government

A BILL FOR AN ACT

101 CONCERNING LOCAL GOVERNMENT COMPETITION IN THE PROVISION
102 OF SPECIFIED COMMUNICATIONS SERVICES.

Bill Summary

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

Prohibits a local government from providing cable television service, telecommunications service, and high speed internet access (advanced) service to subscribers, as well as taking specified actions related to providing such services, except in specified circumstances. Allows such services to be provided if a local government:

 Holds a preliminary public hearing before providing a service with notice to the public and any private provider of the service within the boundaries of the local

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.

government;

Conducts at least 2 public hearings in accordance with specified notice and other requirements for the purpose of informing the public of the local government's intent to provide the service; and

Holds an election in accordance with specified requirements on whether the local government shall provide the proposed service.

Prohibits a local government from cross subsidizing its cable television, telecommunications, or advanced services with tax revenues, below-market rate loans, or other sources. Specifies requirements to account for operations of the services and provides that the books and records for the services shall be subject to audit by the state auditor.

Authorizes the governing body of a local government to issue bonds to finance the capital costs for facilities necessary to provide cable television, telecommunications, or advanced service. Specifies requirements for the payment of the bonds and costs associated with the bonds.

Requires a local government that provides cable television, telecommunications, or advance service to comply with all state and federal laws applicable to providing the service. Prohibits a local government from providing a service outside the boundaries of the local government, from receiving distributions from the high cost fund, and from exercising the power of eminent domain to provide a service. Specifies enforcement and appeal provisions.

Specifies that local governments shall not be afforded immunity from antitrust liability with respect to cable television, telecommunications, or advanced services provided by the local government.

Defines terms. Makes legislative findings and declarations.

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

2 **SECTION 1.** Title 29, Colorado Revised Statutes, is amended

3 BY THE ADDITION OF A NEW ARTICLE to read:

4 **ARTICLE 27**

5 **Competition in Utility and Entertainment Services**

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PART 1
COMPETITION IN UTILITY
AND ENTERTAINMENT SERVICES

29-27-101. Legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT IT IS THE POLICY OF THIS STATE TO:

(a) ENSURE THAT CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, AND HIGH SPEED INTERNET ACCESS, OTHERWISE KNOWN AS ADVANCED SERVICE, ARE EACH PROVIDED WITHIN A CONSISTENT, COMPREHENSIVE, AND NONDISCRIMINATORY FEDERAL, STATE, AND LOCAL GOVERNMENT FRAMEWORK; AND

(b) ENSURE THAT WHEN A LOCAL GOVERNMENT PROVIDES CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE TO ITS INHABITANTS AND COMPETES WITH PRIVATE PROVIDERS WHOSE ACTIVITIES ARE REGULATED BY THE LOCAL GOVERNMENT, THE LOCAL GOVERNMENT DOES NOT DISCRIMINATE AGAINST THE COMPETING PROVIDERS OF THE SAME SERVICE.

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

(a) THERE IS A NEED FOR STATEWIDE UNIFORMITY IN THE REGULATION OF ALL PUBLIC AND PRIVATE ENTITIES THAT PROVIDE CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, AND ADVANCED SERVICE.

(b) MUNICIPAL ORDINANCES, RULES, AND OTHER REGULATIONS GOVERNING THE PROVISION OF CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, AND ADVANCED SERVICE BY A LOCAL GOVERNMENT IMPACT PERSONS LIVING OUTSIDE THE MUNICIPALITY.

(c) REGULATING THE PROVISION OF CABLE TELEVISION SERVICE,

1 TELECOMMUNICATIONS SERVICE, AND ADVANCED SERVICE BY A LOCAL
2 GOVERNMENT IS A MATTER OF STATEWIDE CONCERN.

3 **29-27-102. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
4 CONTEXT OTHERWISE REQUIRES:

5 (1) "ADVANCED SERVICE" MEANS HIGH-SPEED INTERNET ACCESS
6 CAPABILITY IN EXCESS OF ONE HUNDRED FORTY-FOUR KILOBITS PER
7 SECOND BOTH UPSTREAM AND DOWNSTREAM.

8 (2) "CABLE TELEVISION SERVICE" MEANS THE ONE-WAY
9 TRANSMISSION TO SUBSCRIBERS OF VIDEO PROGRAMMING OR OTHER
10 PROGRAMMING SERVICE, AS WELL AS SUBSCRIBER INTERACTION, IF ANY,
11 THAT IS REQUIRED FOR THE SELECTION OR USE OF THE VIDEO
12 PROGRAMMING OR OTHER PROGRAMMING SERVICE.

13 (3) "CAPITAL COSTS" MEANS ALL COSTS OF PROVIDING CABLE
14 TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCE
15 SERVICE THAT ARE CAPITALIZED IN ACCORDANCE WITH GENERALLY
16 ACCEPTED ACCOUNTING PRINCIPLES.

17 (4) "CROSS SUBSIDIZATION" MEANS:

18 (a) ANY CABLE TELEVISION SERVICE, TELECOMMUNICATIONS
19 SERVICE, OR ADVANCED SERVICE PROVIDED PURSUANT TO THIS ARTICLE
20 THAT IS PRICED BELOW COST BY THE USE OF REVENUES OF THE LOCAL
21 GOVERNMENT OTHER THAN REVENUES THE LOCAL GOVERNMENT
22 GENERATES FROM THE CABLE TELEVISION SERVICE, TELECOMMUNICATIONS
23 SERVICE, OR ADVANCED SERVICE IT PROVIDES; OR

24 (b) ANY CABLE TELEVISION SERVICE, TELECOMMUNICATIONS
25 SERVICE, OR ADVANCED SERVICE PROVIDED PURSUANT TO THIS ARTICLE
26 THAT DERIVES ANY BENEFIT FROM ANY OTHER SERVICE THE LOCAL
27 GOVERNMENT PROVIDES, WITHOUT THE LOCAL GOVERNMENT RECEIVING

1 FROM ITS CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR
2 ADVANCED SERVICE OPERATIONS REASONABLE COMPENSATION FOR THE
3 BENEFIT PROVIDED.

4 (5) "DIRECT COSTS" MEANS THOSE EXPENSES OF A LOCAL
5 GOVERNMENT THAT ARE DIRECTLY ATTRIBUTABLE TO PROVIDING CABLE
6 TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED
7 SERVICE AND THAT WOULD BE ELIMINATED IF THE CABLE TELEVISION
8 SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE WERE
9 NOT PROVIDED BY THE LOCAL GOVERNMENT.

10 (6) "LOCAL GOVERNMENT" MEANS ANY CITY, COUNTY, CITY AND
11 COUNTY, SPECIAL DISTRICT, OR OTHER POLITICAL SUBDIVISION OF THIS
12 STATE.

13 (7) "PRIVATE PROVIDER" MEANS A PRIVATE ENTITY THAT PROVIDES
14 CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR
15 ADVANCED SERVICE.

16 (8) "SUBSCRIBER" MEANS A PERSON THAT LAWFULLY RECEIVES
17 CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR
18 ADVANCED SERVICE.

19 (9) "TELECOMMUNICATIONS SERVICE" HAS THE SAME MEANING AS
20 SET FORTH IN SECTION 40-15-102 (29), C.R.S.

21 **29-27-103. Limitations on providing cable television,**
22 **telecommunications, and advanced services.** (1) EXCEPT AS PROVIDED
23 IN PART 2 OF THIS ARTICLE, A LOCAL GOVERNMENT SHALL NOT:

24 (a) PROVIDE TO ONE OR MORE SUBSCRIBERS CABLE TELEVISION
25 SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE; OR

26 (b) PURCHASE, LEASE, CONSTRUCT, MAINTAIN, OR OPERATE ANY
27 FACILITY FOR THE PURPOSE OF PROVIDING CABLE TELEVISION SERVICE,

1 TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE TO ONE OR MORE
2 SUBSCRIBERS.

3 (2) FOR PURPOSES OF THIS ARTICLE, A LOCAL GOVERNMENT
4 PROVIDES CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE,
5 OR ADVANCED SERVICE IF THE LOCAL GOVERNMENT PROVIDES THE CABLE
6 TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED
7 SERVICE:

8 (a) DIRECTLY OR INDIRECTLY;

9 (b) THROUGH AN AUTHORITY OR INSTRUMENTALITY ACTING ON
10 BEHALF OF THE LOCAL GOVERNMENT OR FOR THE BENEFIT OF THE LOCAL
11 GOVERNMENT BY ITSELF;

12 (c) THROUGH A PARTNERSHIP OR JOINT VENTURE;

13 (d) BY CONTRACT, INCLUDING A CONTRACT WHEREBY THE LOCAL
14 GOVERNMENT LEASES, SELLS CAPACITY IN, OR GRANTS OTHER SIMILAR
15 RIGHTS TO A PRIVATE PROVIDER TO USE LOCAL GOVERNMENTAL FACILITIES
16 IN CONNECTION WITH A PRIVATE PROVIDER'S OFFERING OF CABLE
17 TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED
18 SERVICE;

19 (e) THROUGH THE SALE OR PURCHASE OF RESALE CABLE
20 TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED
21 SERVICE; OR

22 (f) THROUGH THE SALE OR PURCHASE OF WHOLESALE CABLE
23 TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED
24 SERVICE.

25 PART 2

26 CONDITIONS FOR PROVIDING SERVICES

27 **29-27-201. Required action before a local government may**

1 **provide cable television, telecommunications, or advanced services.**

2 (1) BEFORE A LOCAL GOVERNMENT MAY ENGAGE OR OFFER TO ENGAGE IN
3 PROVIDING CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE,
4 OR ADVANCED SERVICE, THE GOVERNING BODY OF THE LOCAL
5 GOVERNMENT SHALL:

6 (a) HOLD A PRELIMINARY PUBLIC HEARING; AND

7 (b) PROVIDE NOTICE OF THE PRELIMINARY PUBLIC HEARING AT
8 LEAST SIXTY DAYS IN ADVANCE TO THE PUBLIC AND TO ANY PRIVATE
9 PROVIDER CURRENTLY OFFERING CABLE TELEVISION SERVICE,
10 TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE WITHIN THE
11 BOUNDARIES OF THE LOCAL GOVERNMENT.

12 (2) IF THE CONDITIONS OF SUBSECTION (1) OF THIS SECTION ARE
13 MET, PUBLIC HEARINGS SHALL BE HELD AS REQUIRED BY SECTION
14 29-27-202.

15 **29-27-202. Public hearings.** (1) THE GOVERNING BODY OF A
16 LOCAL GOVERNMENT SHALL SCHEDULE AT LEAST TWO PUBLIC HEARINGS
17 TO BE HELD WITHIN SIXTY DAYS OF THE MEETING AT WHICH THE PUBLIC
18 HEARINGS ARE SCHEDULED. THE TWO PUBLIC HEARINGS SHALL BE
19 SCHEDULED AT LEAST SEVEN DAYS APART. THE PUBLIC HEARINGS SHALL
20 BE HELD FOR THE PURPOSE OF INFORMING THE PUBLIC OF THE LOCAL
21 GOVERNMENT'S INTENT TO ENGAGE IN PROVIDING CABLE TELEVISION
22 SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE AND
23 CONSIDERING ANY RELEVANT INPUT PRESENTED BY THE PUBLIC AT THE
24 HEARINGS.

25 (2) THE LOCAL GOVERNMENT SHALL PUBLISH NOTICE OF THE
26 PUBLIC HEARINGS REQUIRED UNDER SUBSECTION (1) OF THIS SECTION AT
27 LEAST ONCE A WEEK FOR THREE CONSECUTIVE WEEKS IN A NEWSPAPER OF

1 GENERAL CIRCULATION WITHIN THE BOUNDARIES OF THE LOCAL
2 GOVERNMENT. THE LAST PUBLICATION OF THE NOTICE SHALL BE AT LEAST
3 THREE DAYS BEFORE THE FIRST PUBLIC HEARING REQUIRED UNDER
4 SUBSECTION (1) OF THIS SECTION.

5 (3) IF THERE IS NO NEWSPAPER OF GENERAL CIRCULATION WITHIN
6 THE BOUNDARIES OF THE LOCAL GOVERNMENT, FOR EACH ONE THOUSAND
7 RESIDENTS, THE LOCAL GOVERNMENT SHALL POST AT LEAST ONE NOTICE
8 OF THE HEARINGS IN A SEPARATE CONSPICUOUS PLACE WITHIN THE
9 BOUNDARIES OF THE LOCAL GOVERNMENT THAT IS LIKELY TO GIVE NOTICE
10 OF THE HEARINGS TO THE GREATEST NUMBER OF PEOPLE RESIDING WITHIN
11 THE BOUNDARIES OF THE LOCAL GOVERNMENT. THE LOCAL GOVERNMENT
12 SHALL POST THE NOTICES AT LEAST SEVEN DAYS BEFORE THE FIRST PUBLIC
13 HEARING IS HELD.

14 **29-27-203. Vote - referendum.** (1) AFTER A LOCAL
15 GOVERNMENT HAS COMPLIED WITH ALL OF THE REQUIREMENTS SET FORTH
16 IN SECTIONS 29-27-201 AND 29-27-202, AN ELECTION SHALL BE CALLED
17 ON WHETHER OR NOT THE LOCAL GOVERNMENT SHALL PROVIDE THE
18 PROPOSED CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE,
19 OR ADVANCED SERVICE.

20 (2) THE ELECTION SHALL BE HELD AT THE NEXT GENERAL
21 ELECTION OR AT A LOCAL SPECIAL ELECTION, THE PURPOSE OF WHICH IS
22 AUTHORIZED BY THIS SECTION IN ACCORDANCE WITH THE PROVISIONS OF
23 ARTICLES 1 TO 13 OF TITLE 1, C.R.S., EXCEPT AS PROVIDED IN THIS
24 SECTION.

25 (3) THE NOTICE OF THE ELECTION SHALL INCLUDE, WITH ANY
26 OTHER INFORMATION REQUIRED BY LAW, A SUMMARY OF THE CABLE
27 TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED

1 SERVICE THAT THE GOVERNING BODY OF THE LOCAL GOVERNMENT
2 PROPOSES TO PROVIDE TO SUBSCRIBERS RESIDING WITHIN THE BOUNDARIES
3 OF THE LOCAL GOVERNMENT.

4 (4) THE BALLOT AT AN ELECTION CONDUCTED PURSUANT TO THIS
5 SECTION SHALL POSE THE QUESTION SUBSTANTIALLY AS FOLLOWS: "SHALL
6 THE [NAME OF THE LOCAL GOVERNMENT] PROVIDE [CABLE TELEVISION
7 SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE] TO THE
8 INHABITANTS OF THE [LOCAL GOVERNMENT]?" THE BALLOT PROPOSITION
9 SHALL NOT TAKE EFFECT UNTIL SUBMITTED TO THE ELECTORS AND
10 APPROVED BY THE MAJORITY OF THOSE VOTING ON THE BALLOT.

11 PART 3
12 PROHIBITIONS ON
13 ANTICOMPETITIVE CROSS-SUBSIDIES

14 **29-27-301. General provisions.** A LOCAL GOVERNMENT SHALL
15 NOT ENGAGE IN CROSS SUBSIDIZATION OF ANY CABLE TELEVISION SERVICE,
16 TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE WITH TAX
17 REVENUES, INCOME FROM OTHER LOCAL GOVERNMENT OR UTILITY
18 SERVICES, BELOW-MARKET RATE LOANS FROM THE LOCAL GOVERNMENT,
19 OR ANY OTHER MEANS.

20 **29-27-302. Enterprise funds for cable television,**
21 **telecommunications, or advanced services.** (1) A LOCAL GOVERNMENT
22 THAT PROVIDES CABLE TELEVISION SERVICE, TELECOMMUNICATIONS
23 SERVICE, OR ADVANCED SERVICE UNDER THIS ARTICLE SHALL:

24 (a) ESTABLISH AN ENTERPRISE FUND TO ACCOUNT FOR THE LOCAL
25 GOVERNMENT'S OPERATIONS OF THE CABLE TELEVISION SERVICE,
26 TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE;

27 (b) ADOPT SEPARATE OPERATING AND CAPITAL BUDGETS FOR THE

1 LOCAL GOVERNMENT'S CABLE TELEVISION SERVICE,
2 TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE; AND

3 (c) NOT TRANSFER ANY MONEYS, APPROPRIATIONS, OR BALANCES
4 INTO AN ENTERPRISE FUND ESTABLISHED UNDER THIS SECTION EXCEPT AS
5 OTHERWISE PROVIDED IN THIS SECTION.

6 (2) A LOCAL GOVERNMENT SHALL KEEP ACCURATE BOOKS AND
7 RECORDS FOR ANY CABLE TELEVISION SERVICE, TELECOMMUNICATIONS
8 SERVICE, OR ADVANCED SERVICE PROVIDED BY THE LOCAL GOVERNMENT.

9 THE BOOKS AND RECORDS REQUIRED TO BE KEPT UNDER THIS SUBSECTION

10 (2) SHALL BE SUBJECT TO AUDIT BY THE STATE AUDITOR OR THE AUDITOR'S
11 DESIGNEE TO VERIFY THE LOCAL GOVERNMENT'S COMPLIANCE WITH THE
12 REQUIREMENTS OF THIS ARTICLE. THE COST OF THE AUDIT, WHETHER
13 PERFORMED BY THE STATE AUDITOR OR THE AUDITOR'S DESIGNEE, SHALL
14 BE BORNE BY THE LOCAL GOVERNMENT.

15 **29-27-303. Bonding authority.** (1) THE GOVERNING BODY OF A
16 LOCAL GOVERNMENT MAY BY RESOLUTION DETERMINE TO ISSUE ONE OR
17 MORE BONDS TO FINANCE THE CAPITAL COSTS FOR THE PURCHASE, LEASE,
18 CONSTRUCTION, OPERATION, OR MAINTENANCE OF THE FACILITIES
19 NECESSARY TO PROVIDE TO SUBSCRIBERS CABLE TELEVISION SERVICE,
20 TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE.

21 (2) THE RESOLUTION DESCRIBED IN SUBSECTION (1) OF THIS
22 SECTION SHALL SET FORTH THE PURPOSE FOR WHICH THE INDEBTEDNESS
23 IS TO BE CREATED AND SPECIFY THE DOLLAR AMOUNT OF THE BONDS
24 PROPOSED TO BE ISSUED.

25 (3) A BOND ISSUED UNDER THIS SECTION SHALL BE SECURED AND
26 PAID FOR SOLELY FROM THE REVENUES GENERATED BY THE LOCAL
27 GOVERNMENT FROM:

1 (a) CABLE TELEVISION SERVICE WITH RESPECT TO BONDS ISSUED
2 TO FINANCE FACILITIES FOR A LOCAL GOVERNMENT'S CABLE TELEVISION
3 SERVICE;

4 (b) TELECOMMUNICATIONS SERVICE WITH RESPECT TO BONDS
5 ISSUED TO FINANCE FACILITIES FOR THE LOCAL GOVERNMENT'S
6 TELECOMMUNICATIONS SERVICE; AND

7 (c) ADVANCED SERVICE WITH RESPECT TO BONDS ISSUED TO
8 FINANCE FACILITIES FOR THE LOCAL GOVERNMENT'S ADVANCED SERVICE.

9 (4) A LOCAL GOVERNMENT SHALL NOT PAY ANY ORIGATION,
10 FINANCING, OR OTHER CARRYING COSTS ASSOCIATED WITH ANY BONDS
11 ISSUED UNDER THIS SECTION FROM THE GENERAL FUND OR ANY OTHER
12 ENTERPRISE FUND OR SOURCE OF MONEYS OF THE LOCAL GOVERNMENT.

13 PART 4

14 COMPLIANCE WITH LOCAL, STATE,
15 AND FEDERAL REGULATIONS

16 **29-27-401. General operating limitations.** (1) A LOCAL
17 GOVERNMENT THAT PROVIDES CABLE TELEVISION SERVICE,
18 TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE UNDER THIS
19 ARTICLE SHALL COMPLY WITH ALL STATE AND FEDERAL LAWS, RULES, AND
20 REGULATIONS APPLICABLE TO A PRIVATE PROVIDER OF CABLE TELEVISION
21 SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE.

22 (2) (a) A LOCAL GOVERNMENT SHALL NOT MAKE OR GRANT ANY
23 UNDUE OR UNREASONABLE PREFERENCE OR ADVANTAGE TO ITSELF OR TO
24 ANY PRIVATE PROVIDER OF CABLE TELEVISION SERVICES,
25 TELECOMMUNICATIONS SERVICES, OR ADVANCED SERVICES.

26 (b) A LOCAL GOVERNMENT SHALL APPLY WITHOUT
27 DISCRIMINATION AS TO ITSELF AND TO ANY PRIVATE PROVIDER THE LOCAL

1 GOVERNMENT'S ORDINANCES, RULES, AND POLICIES, INCLUDING THOSE
2 RELATING TO:

- 3 (I) OBLIGATION TO SERVE;
- 4 (II) ACCESS TO PUBLIC RIGHTS-OF-WAY;
- 5 (III) PERMITTING;
- 6 (IV) PERFORMANCE BONDING;
- 7 (V) REPORTING; AND
- 8 (VI) QUALITY OF SERVICE.

9 (3) IN CALCULATING THE RATES CHARGED BY A LOCAL
10 GOVERNMENT FOR A CABLE TELEVISION SERVICE, TELECOMMUNICATIONS
11 SERVICE, OR ADVANCED SERVICE, THE LOCAL GOVERNMENT:

12 (a) SHALL INCLUDE WITHIN ITS RATES AN AMOUNT EQUAL TO ALL
13 TAXES, FEES, AND OTHER ASSESSMENTS THAT WOULD BE APPLICABLE TO
14 A SIMILARLY SITUATED PRIVATE PROVIDER OF THE SAME SERVICES,
15 INCLUDING:

- 16 (I) FEDERAL, STATE, AND LOCAL TAXES;
- 17 (II) FRANCHISE FEES;
- 18 (III) PERMIT FEES;
- 19 (IV) PUBLIC EDUCATION OR GOVERNMENT ACCESS FEES;
- 20 (V) POLE ATTACHMENT FEES; AND
- 21 (VI) ANY OTHER TAX, FEE, OR ASSESSMENT SIMILAR TO THOSE
22 DESCRIBED IN SUBPARAGRAPHS (I) TO (V) OF THIS PARAGRAPH (a).

23 (b) SHALL NOT PRICE ANY CABLE TELEVISION SERVICE,
24 TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE AT A LEVEL THAT
25 IS LESS THAN THE SUM OF:

- 26 (I) THE ACTUAL DIRECT COSTS OF PROVIDING THE SERVICE;
- 27 (II) THE ACTUAL INDIRECT COSTS OF PROVIDING THE SERVICE; AND

1 (III) THE AMOUNT INCLUDED UNDER PARAGRAPH (a) OF THIS
2 SUBSECTION (3).

3 (c) NOTWITHSTANDING ANY OTHER PROVISION OF THIS
4 SUBSECTION (3), A LOCAL GOVERNMENT MAY ENGAGE IN PROMOTIONAL
5 PRICING ON THE SAME TERMS AND CONDITIONS AS A SIMILARLY SITUATED
6 PRIVATE PROVIDER.

7 (4) A LOCAL GOVERNMENT SHALL NOT PROVIDE OR OFFER TO
8 PROVIDE CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR
9 ADVANCED SERVICE TO A SUBSCRIBER THAT DOES NOT RESIDE WITHIN THE
10 GEOGRAPHIC BOUNDARIES OF THE LOCAL GOVERNMENT.

11 (5) A LOCAL GOVERNMENT SHALL NOT RECEIVE DISTRIBUTIONS
12 FROM THE HIGH COST FUND REFERENCED IN SECTION 40-15-208 (1), C.R.S.

13 **29-27-402. Eminent domain.** A LOCAL GOVERNMENT SHALL NOT
14 EXERCISE ITS POWER OF EMINENT DOMAIN TO CONDEMN A FACILITY OR THE
15 EQUIPMENT OF A PRIVATE PROVIDER FOR THE PURPOSE OF PROVIDING TO
16 A SUBSCRIBER CABLE TELEVISION SERVICE, TELECOMMUNICATIONS
17 SERVICE, OR ADVANCED SERVICE.

18 **29-27-403. Antitrust immunity.** NO IMMUNITY FROM STATE OR
19 FEDERAL ANTITRUST LIABILITY SHALL BE AFFORDED TO A LOCAL
20 GOVERNMENT THAT IS OFFERING OR PROVIDING CABLE TELEVISION
21 SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE.

22 **29-27-404. Scope of article.** (1) NOTHING IN THIS ARTICLE SHALL
23 BE CONSTRUED TO AUTHORIZE ANY LOCAL GOVERNMENT TO:

24 (a) PROVIDE, DIRECTLY OR INDIRECTLY, CABLE TELEVISION
25 SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE; OR

26 (b) PURCHASE, LEASE, CONSTRUCT, MAINTAIN, OR OPERATE A
27 FACILITY FOR THE PURPOSE OF PROVIDING, DIRECTLY OR INDIRECTLY,

1 CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR
2 ADVANCED SERVICE.

3 (2) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO APPLY TO
4 A LOCAL GOVERNMENT PURCHASING, LEASING, CONSTRUCTING, OR
5 EQUIPPING FACILITIES THAT ARE DESIGNED TO PROVIDE CABLE TELEVISION
6 SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE WITHIN
7 THE LOCAL GOVERNMENT THAT THE LOCAL GOVERNMENT USES FOR
8 INTERNAL GOVERNMENTAL PURPOSES.

9 **29-27-405. Enforcement and appeal.** (1) BEFORE AN
10 INDIVIDUAL SUBSCRIBER OR A PRIVATE PROVIDER THAT COMPETES WITH
11 A LOCAL GOVERNMENT IN THE GEOGRAPHIC BOUNDARIES OF THE LOCAL
12 GOVERNMENT MAY FILE AN ACTION IN DISTRICT COURT FOR VIOLATION OF
13 THIS ARTICLE, THAT PERSON SHALL FILE A WRITTEN COMPLAINT WITH THE
14 LOCAL GOVERNMENT. THE FAILURE BY THE LOCAL GOVERNMENT TO ISSUE
15 A FINAL DECISION REGARDING THE COMPLAINT WITHIN FORTY-FIVE DAYS
16 SHALL BE TREATED AS AN ADVERSE DECISION FOR PURPOSES OF APPEAL.

17 (2) AN APPEAL OF AN ADVERSE DECISION FROM THE LOCAL
18 GOVERNMENT MAY BE TAKEN TO THE DISTRICT COURT FOR A DE NOVO
19 PROCEEDING.

20 **SECTION 2. Applicability.** This act shall apply to cable
21 television service, telecommunications service, and advanced service first
22 provided by a local government on or after the effective date of this act.

23 **SECTION 3. Safety clause.** The general assembly hereby finds,
24 determines, and declares that this act is necessary for the immediate
25 preservation of the public peace, health, and safety.