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## DIGEST

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Duplessis

SB No. 807

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

Proposed law requires the secretary of state to issue a certificate authorizing the applicant to offer cable or video service within 30 days of receipt of the application. Proposed law provides for the certificate to be effective for 30 days after issuance.

Proposed law provides certain protection for private land owners.

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

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

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

Proposed law requires the applicant to maintain insurance in an amount of not less than \$1,000,000 either through a policy of public liability insurance or through self-insurance.

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

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

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

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

Proposed law provides an incumbent service provider the option to terminate an existing franchise previously issued by a local governmental subdivision and instead offer cable service or video service under a certificate of state franchise, provided the following requirements are satisfied by the incumbent service provider:

- (1) An incumbent service provider files a state of termination with the secretary of state, as required by proposed law .
- (2) An incumbent service provider remain, under the terms and conditions of the terminated franchise, subject to and obligated for any indebtedness, liability or obligation that is accrued, due and owing to a local governmental subdivision at the time the incumbent service provider exercises the termination option.
- (3) An incumbent service provider remains subject to the contractual rights, duties and obligations incurred by the incumbent service provider under the terms and conditions of the terminated local franchise that are owed to any private person, including a subscriber.

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

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

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

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

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

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

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

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

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

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

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

Proposed law requires a certificate holder, upon request of a local governmental subdivision without PEG access programming streams or channels, to furnish up to three PEG access programming streams or channels for a local governmental subdivision with a population of at least 50,000 and up to two PEG access programming streams or channels for a local governmental subdivision with a population of less than 50,000. However, a certificate

holder shall be required to carry PEG access programming streams or channels on the basic subscription service offered by the provider.

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

Proposed law provides that the operation of any PEG access programming stream or channel provided pursuant to proposed law shall be the responsibility of the municipality or the parish receiving the benefit of the programming stream or channel and the certificate holder bears only the responsibility for the transmission of the programming stream or channel.

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

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

Proposed law provides that a local governmental subdivision may require that a holder of a state-issued certificate of franchise authority pay PEG access support in an amount up to ½% of gross revenues, as defined by proposed law.

Proposed law provides that no payments shall be due under proposed law until the local governmental subdivision notifies the certificate holder of franchise authority, in writing, of the amount owed.

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

Proposed law requires a holder of a state-issued certificate of franchise authority to comply with 47 C.F.R. 76.309(c). Proposed law further prohibits any franchising authority or local governmental subdivision from requiring a certificate holder from complying with any customer service standards other than these.

Proposed law requires a holder of a state-issued certificate of franchise authority to comply with the federal Emergency Alert System regulations as applied by the Federal Communications Commission.

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

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

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

Proposed law provides that if during installation, construction, or maintenance of a network, the holder disturbs any public right of way, the holder shall replace and restore the public right of way to a condition reasonably comparable to the condition of the public right of way existing immediately prior to such disturbance.

Proposed law requires the certificate holder to indemnify a local governmental subdivision, its officers, agents, and employees from any liability for damages and for any liability or claims resulting from tangible property damage or bodily injury, including accidental death, to the extent proximately caused by the holder's negligent construction, operation, or maintenance of its cable system or wireline facilities used to distribute video programming services, provided that the local governmental subdivision gives the holder written notice of its obligation to indemnify the local governmental subdivision within 30 days of receipt of a claim or action. Proposed law provides for the certificate holder to have the right to select counsel of the holder's choice to defend the claim. Proposed law prohibits the holder from indemnifying the local governmental subdivision for any damages, liability, or claims resulting from the negligence or willful misconduct of the local governmental subdivision, its officers, agents, employees, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any person or entity other than the holder in connection with PEG programming.

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

Proposed law provides that a local governmental subdivision having a home rule charter existing or adopted when the La. Constitution was adopted on April 20, 1974, and which is governed by Art. VI, §4 of the La. Constitution shall not be subject to proposed law, but by local ordinance, may elect to be governed by proposed law.

Proposed law provides that local governmental subdivisions which have home rule charters adopted after the La. Constitution was adopted on April 20, 1974, and which are governed by Art. VI, §5 of the La. Constitution and local governmental subdivisions without home rule charters are denied the authority to adopt ordinances that are inconsistent with proposed law.

(Adds R.S. 45:1361 - 1378)

#### Summary of Amendments Adopted by Senate

##### Senate Floor Amendments to engrossed bill.

1. Requires applicant to provide a copy of the application to the affected local governmental subdivisions at the same time the application is submitted to the secretary of state.
2. Requires the secretary of state to issue the certificate authorizing the applicant to offer services within 30 days of receipt and that such certificate is good for 30 days from receipt.
3. Requires applicant to maintain \$1,000,000 of insurance.
4. Removes prohibition on contingency fees for audits or recovery of payments.
5. Specifies that the grant of authority to construct facilities provide the holder of the certificate no greater authority than any other telephone, telegraph, or other company formed for transmission of intelligence.
6. Requires applicant to indemnify the affected local governmental subdivisions for damages.
7. Requires PEG access support fees to be uniformly applied to all holders of state-issued certificates within a local governmental subdivision.

#### Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Commerce to the reengrossed bill.

1. Changes the amount of time for the secretary of state to notify the applicant of the incompleteness of an affidavit from 10 days to 30 days.
2. Provides that the secretary of state shall have no regulatory authority over any cable service provider or video service provider.
3. Provides for a statement of termination between the local governmental subdivision and the incumbent service provider.
4. Changes the amount of time for payment of franchise fees from within 30 days after the end of the preceding quarter to within 45 days.
5. Clarifies that build-out is prohibited.
6. Provides for one PEG access programming stream or channel in the basic subscription and other PEG streams or channels for other subscription packages.
7. Provides for discretion by the certificate holder regarding previously lost programming stream or channel.
8. Changes effective date to August 15, 2008.