

SENATE BILL NO. 807 (Substitute of Senate Bill No. 422 by Senator Duplessis)

BY SENATOR DUPLESSIS AND REPRESENTATIVES ARNOLD, CHANDLER,
HARDY, HENDERSON, MICHAEL JACKSON, MONICA, PUGH AND
WADDELL

1 AN ACT

2 To enact Chapter 10-A of Title 45 of the Louisiana Revised Statutes of 1950, to be
3 comprised of R.S. 45:1361 through 1378, relative to cable services and video
4 services; to create the "Consumer Choice for Television Act"; to provide guidelines
5 for cable services and video services; to provide for certificate of franchise authority
6 to be distributed by the secretary of state; to provide for franchise fees associated
7 with cable services or video services; to provide for franchise fee audits and dispute
8 resolutions; to provide for the distribution of these fees; to provide for a prohibition
9 against build-out requirements; to authorize a local governmental subdivision to
10 regulate a certificate holder; to prohibit discrimination with regard to cable services
11 or video services; to provide for public, educational, and governmental access
12 programming streams and support; to provide for effect on local franchise
13 agreements; to provide for a prohibition of in-kind contributions or grants; to provide
14 for customer service standards; to provide for emergency alert services; to provide
15 for indemnity; and to provide for related matters.

16 Be it enacted by the Legislature of Louisiana:

17 Section 1. Chapter 10-A of Title 45 of the Louisiana Revised Statutes of 1950,
18 comprised of R.S. 45:1361 through 1378, is hereby enacted to read as follows:

19 **CHAPTER 10-A. CONSUMER CHOICE FOR TELEVISION ACT**

20 **§1361. Short title**

21 **This Chapter shall be known and may be cited as the "Consumer Choice**
22 **for Television Act."**

23 **§1362. Legislative findings**

1 A. The Legislature of Louisiana finds and declares that it is the policy
2 of this state to increase competition for cable services and video services
3 throughout the state in order to provide the widest possible diversity of
4 information and new resources to the general public and to encourage economic
5 development in this state. Increased competition in cable services and video
6 services not only provides consumers with more choice, better prices, and better
7 services, but also encourages and speeds the deployment of new communication
8 technologies to the public. The technology used to deliver cable and video
9 service is not constrained or limited by local governmental subdivision
10 boundaries. Accordingly, it is appropriate for the legislature to review and
11 update the policy of this state with regard to these services and to protect the
12 health, safety, and welfare of Louisiana citizens.

13 B. The Legislature of Louisiana finds that reforming and streamlining
14 the current system of regulating cable services and video services will relieve
15 consumers of unnecessary costs and burdens, encourage investment in advanced
16 networks, and promote deployment of advanced and innovative services that
17 provide competitive choices for consumers. The Legislature of Louisiana
18 further finds that a streamlined procedure for granting and renewing cable
19 service and video service franchises will provide statewide uniformity to allow
20 functionally equivalent services to compete fairly and to allow new consumer
21 services to be deployed more quickly.

22 C. The Legislature of Louisiana further finds that it is in the best
23 interests of consumers of video programming services that access to the public
24 rights-of-way for the provision of cable and video services to be provided on a
25 non-exclusive, nondiscriminatory basis, that such access not be unreasonably
26 denied, and that the fees and charges applied to video programming providers
27 be equitable regardless of the technology used.

28 D. The Legislature of Louisiana intends that this Chapter provide
29 uniform regulation of cable and video service franchising. Therefore, the
30 Legislature of Louisiana intends that the Chapter occupy the entire field of

1 cable and video service franchising regulation in the state of Louisiana and,
2 except as provided herein, shall preempt any ordinance, resolution, or similar
3 matter adopted by a local governmental subdivision that purports to address
4 cable or video service franchising or regulation. This Chapter is enacted
5 pursuant to the police powers ultimately reserved to the state by Article VI,
6 Section 9 of the Constitution of Louisiana.

7 E. The Legislature of Louisiana does not intend that the "opt-in" right
8 afforded by R.S. 45:1365 shall release any indebtedness, liability or obligation
9 that is owed to the state, a parish, or a municipality at the time that an
10 incumbent service provider exercises those rights. If a court should determine
11 that R.S. 45:1365 has the effect of releasing an indebtedness, liability or
12 obligation in contravention of Article VII, Section 15 of the Constitution of
13 Louisiana, then it is the intent of the legislature that R.S. 45:1365 be severed
14 from this Chapter so that the remaining provisions can remain in full force and
15 effect.

16 §1363. Definitions

17 When used in this Chapter:

18 (1) "Cable service" means the one-way transmission to subscribers of
19 video programming or other programming service and any subscriber
20 interaction required for the selection or use of such video programming or other
21 programming service, but shall not include any video programming provided
22 by a commercial mobile service provider.

23 (2) "Cable service provider" means any person or entity that provides
24 cable service over a cable system and directly or through one or more affiliates
25 owns a significant interest in such cable system, or who otherwise controls or is
26 responsible for, through any arrangement, the management and operation of
27 such system.

28 (3) "Cable system" means a facility consisting of a set of closed
29 transmission paths and associated signal generation, reception, and control
30 equipment that is designed to provide cable service which includes video

1 programming and which is provided to multiple subscribers within a
2 community but does not include the following facilities or systems:

3 (a) A facility that serves only to retransmit the television signals of one
4 or more television broadcast stations.

5 (b) A facility that serves subscribers without using any public right of
6 way.

7 (c) A facility of a common carrier which is subject, in whole or in part,
8 to common carrier regulation, except that such facility shall be considered a
9 cable system to the extent the facility is used in the transmission of video
10 programming directly to subscribers, unless the extent of such use is solely to
11 provide interactive on-demand services.

12 (d) An open video system to the extent the system is deemed under
13 federal law not to be a cable system.

14 (e) Any facilities of an electric utility used solely for operating its electric
15 system.

16 (4) "Certificate" means the certificate of franchise authority issued by
17 the secretary of state to a person or entity to provide cable service or video
18 service in this state.

19 (5) "Commercial mobile service provider" means an interconnected
20 radio communication service carried on between mobile stations or receivers
21 and land stations, and by mobile stations communicating among themselves,
22 provided for profit and to the public or to a substantial portion of the public.

23 (6) "Franchise" means an initial authorization, or renewal of an
24 authorization, issued by a franchising authority regardless of whether the
25 authorization is designated as a franchise, permit, license, resolution, contract,
26 certificate, agreement, or otherwise, that authorizes the construction and
27 operation of a cable system, or other wireline facilities used to distribute video
28 programming services, in the public rights of way.

29 (7) "Franchise authority" means any governmental entity empowered
30 by federal, state, or local law to grant a franchise for cable service or video

1 service.

2 (8) "Gross revenues" means all revenues received from subscribers for
3 the provision of cable service or video service, including franchise fees and all
4 revenues received from non-subscribers for advertising disseminated through
5 cable service or video service and home shopping services. Gross revenues shall
6 not include all of the following items:

7 (a) Amounts billed and collected from subscribers to recover any tax,
8 surcharge, or governmental fee.

9 (b) Any revenue not actually received, even if billed, such as bad debt.

10 (c) Any revenue received by any affiliate or any other person in exchange
11 for supplying goods or services to the cable service provider or video service
12 provider.

13 (d) Any amounts attributable to refunds, rebates, or discounts.

14 (e) Any revenues from late fees, returned check fees, or interest.

15 (f) Any revenues from sales or rental of property, except such property
16 the subscriber is required to buy or rent exclusively from the cable service
17 provider or video service provider to receive cable service or video service.

18 (g) Any revenues from services provided over the cable system or other
19 wireline facilities used to distribute video programming services that are not
20 classified as cable services or video services including without limitation revenue
21 received from telecommunications services, information services but not
22 excluding cable services or video services, Internet access services, and directory
23 or Internet advertising revenues, including but not limited to yellow pages,
24 white pages, banner advertisements, and electronic publishing advertising.
25 Where the sale of any non-cable service or non-video service is bundled with the
26 sale of one or more cable services or video services and sold for a single non
27 itemized price, the term "gross revenues" shall include only those revenues that
28 are attributable to cable services or video services based on the provider's books
29 and records.

30 (h) Any revenues from sales for resale with respect to which the

1 purchaser is required to pay a franchise fee, provided the purchaser certifies in
2 writing that it will resell the service and pay a franchise fee with respect thereto.

3 (i) Any amounts attributable to a reimbursement of costs, including but
4 not limited to the reimbursements by programmers of marketing costs incurred
5 for the promotion or introduction of video programming.

6 (j) Any revenues from providing or maintaining inside wiring.

7 (9) "Incumbent service provider" means any cable service provider or
8 video service provider providing cable service or video service in a particular
9 municipality or unincorporated area of a parish on the effective date of this
10 Chapter.

11 (10) "Local governmental subdivision" means any parish or
12 municipality.

13 (11) "Predecessor" shall include but not be limited to any entity that
14 directly or indirectly through one or more intermediaries, controls, is controlled
15 by, or is under common control with a person receiving, obtaining, or operating
16 under a municipal or parish cable franchise through merger, sale, assignment,
17 restructuring, or any other type of transaction.

18 (12) "Public right of way" means the area on, below, or above a public
19 roadway, highway, street, public sidewalk, alley, or waterway.

20 (13) "Video programming" means programming provided by, or
21 generally considered comparable to programming provided by, a television
22 broadcast station.

23 (14) "Video service" means video programming services provided
24 through wireline facilities located at least in part in the public rights of way
25 without regard to delivery technology, including Internet protocol technology.
26 "Video service" shall not include any video programming provided by a
27 commercial mobile service provider as defined in this Section or video
28 programming provided as part of a service that enables users to access content,
29 information, e-mail, or other services offered over the public Internet.

30 (15) "Video service provider" means any entity providing video service.

1 "Video service provider" shall not include a cable service provider or any
2 affiliate, successor, or assign of a cable service provider operating under a
3 franchise agreement with a local governmental subdivision in this state on the
4 effective date of this Chapter.

5 §1364. Certificate issued by the state; eligibility

6 A. Any person or entity seeking to provide cable service or video service
7 in this state after the effective date of this Chapter shall file an application for
8 a state franchise with the secretary of state as required by this Section and shall
9 provide a copy of such application simultaneously to each local governmental
10 subdivision listed in Paragraph B(2) of this Section.

11 B. The secretary of state shall issue a certificate authorizing the applicant
12 to offer cable service or video service in this state within thirty days of receipt
13 of an application, which shall consist of an affidavit submitted by the applicant
14 and signed by an officer or general partner of the applicant affirming all of the
15 following items:

16 (1) The applicant agrees to comply with all applicable federal and state
17 laws and regulations.

18 (2) A list of municipalities and parishes to be served, in whole or part, by
19 the applicant, which list shall be updated by the applicant prior to the provision
20 of cable service or video service to an area within a previously undesignated
21 local governmental subdivision.

22 (3) The location of the principal place of business and the names of the
23 principal executive officers of the applicant.

24 (4) The applicant agrees to maintain insurance in an amount not less
25 than one million dollars either through a policy of public liability insurance or
26 through self-insurance.

27 C. The certificate issued by the secretary of state shall be effective thirty
28 days after issuance and shall contain all of the following:

29 (1) A grant of authority to provide cable service or video service as
30 requested in the application.

1 (2)(a) A grant of authority to construct facilities along and over the
2 public roads or public works or public rights of way and along and parallel to
3 any of the railroads and waters in the state whether owned, maintained, or
4 provided by a local governmental subdivision or the state in the delivery of that
5 service, subject to the laws of this state, including the lawful exercise of police
6 powers of the local governmental subdivisions in which the service is delivered.

7 (b) With respect to any area that is privately owned, the grant in this
8 Chapter provides the holder of a state-issued certificate of franchise authority
9 with the same, but no greater, rights for the placement of facilities pursuant to
10 this Chapter as those rights currently existing pursuant to Louisiana Revised
11 Statutes for the placement of facilities for any company formed for the purpose
12 of transmitting intelligence by telephone or telegraph or other system of
13 transmitting intelligence.

14 (3) A statement that the franchise is for a term of fifteen years, is
15 renewable, and is nonexclusive.

16 D. The certificate issued by the secretary of state is fully transferable to
17 any successor in interest to the applicant to which it is initially granted. A
18 notice of transfer shall be promptly filed with the secretary of state within ten
19 days of the completion of the transfer.

20 E. The certificate issued pursuant to this Chapter may be terminated by
21 the cable service provider or video service provider by submitting written notice
22 of the termination to the secretary of state.

23 F. A holder of a certificate who seeks to amend its current certificate to
24 include additional areas to be served shall file an amended application which
25 reflects the new service area to be served and shall provide a copy of such
26 amended application simultaneously to any affected local governmental
27 subdivision within the new service area.

28 G. The failure of the secretary of state to notify the applicant of the
29 incompleteness of the applicant's affidavit or issue a certificate before the
30 thirtieth day after receipt of a completed affidavit shall constitute issuance of

1 the certificate applied for without further action on behalf of the applicant.

2 H. A cable service provider is deemed to have or have had a franchise to
 3 provide cable service in a specific local governmental subdivision on the
 4 effective date of this Chapter if any predecessor of the cable service provider
 5 had a cable franchise agreement granted by that specific local governmental
 6 subdivision on that date.

7 I. Notwithstanding any other provision of law to the contrary, the
 8 secretary of state shall have no regulatory authority over any cable service
 9 provider or video service provider.

10 §1365. State franchise; effect on existing local franchise agreement

11 A. Any incumbent service provider providing cable service or video
 12 service in this state on the effective date of this Chapter under a franchise
 13 previously granted by a local governmental subdivision is not subject to nor
 14 may it avail itself of the state-issued certificate of franchise authority provisions
 15 of this Chapter with respect to that local governmental subdivision until such
 16 franchise expires or as provided in this Section. Notwithstanding any other
 17 provision of law to the contrary, any such cable service provider or video
 18 service provider may offer cable service or video service under a state-issued
 19 certificate of franchise authority in accordance with the provisions of this
 20 Chapter upon meeting one of the following circumstances:

21 (1) Offering service in local governmental subdivisions where it currently
 22 does not have an existing franchise.

23 (2) The filing of a statement of termination in the form of an affidavit
 24 with the secretary of state setting forth a mutually agreed upon date to
 25 terminate the existing franchise set by both the local governmental subdivision
 26 issuing the existing franchise and the incumbent service provider subject to the
 27 existing franchise.

28 (3) The expiration, prior to renewal or extension, of its existing franchise.

29 (4) Termination of its existing franchise, as provided in Subsection B of
 30 this Section.

1 B. Any incumbent service provider shall have the option to terminate an
2 existing franchise previously issued by a local governmental subdivision and
3 may instead offer cable service or video service in such local governmental
4 subdivision under a certificate of state franchise issued by the secretary of state
5 in accordance with the provisions of R.S. 45:1364, provided the following
6 requirements are satisfied by any such incumbent service provider:

7 (1) An incumbent service provider exercising its termination option shall
8 file a statement of termination with the secretary of state in the form of an
9 affidavit containing the information required by R.S. 45:1364(B) and submit
10 copies of such filing with any affected local governmental subdivision.
11 Termination of existing franchises is effective immediately upon the effective
12 date of the certificate of state franchise issued by the secretary of state.

13 (2) An incumbent service provider shall remain, under the terms and
14 conditions of the terminated franchise, subject to and obligated for any
15 indebtedness, liability, or obligation that is accrued, due, and owing to a local
16 governmental subdivision at the time the incumbent service provider terminates
17 the existing franchise previously issued by said local governmental subdivision.
18 Nothing in this Chapter shall be construed to release an incumbent service
19 provider exercising the option to terminate from any such accrued, due and
20 owing indebtedness, liability, or obligation.

21 (3) An incumbent service provider that elects to terminate its existing
22 franchise for a local governmental subdivision shall remain subject to the
23 contractual rights, duties, and obligations incurred by the incumbent service
24 provider under the terms and conditions of the terminated local franchise that
25 are owed to any private person, including a subscriber.

26 §1366. Franchise fee

27 A. The holder of a certificate may be required, pursuant to an ordinance
28 adopted by the local governmental subdivision, to pay a franchise fee equal to
29 a specified percentage of such holder's gross revenues received from the
30 provision of cable service or video service to subscribers located within the

1 municipality or unincorporated areas of the parish and from advertising
2 disseminated through cable service or video service and home shopping services
3 as allocated under Subsection D of this Section. The fee shall not exceed five
4 percent of the holder's gross revenues. The fee shall be uniformly applied to all
5 holders of a state-issued certificate of franchise authority within the local
6 governmental subdivision. The local governmental subdivision shall provide a
7 copy of the enabling ordinance to the holder of a certificate as a condition to
8 receiving any franchise fee payments. As a condition precedent to a certificate
9 holder's obligation to pay a franchise fee established or changed pursuant to
10 this Section, the local governmental subdivision shall provide each certificate
11 holder with a copy of each rate change notification at least forty-five days in
12 advance of the effective date of the rate change.

13 B. The holder of a certificate shall pay to the local governmental
14 subdivision quarterly the aggregate amount of the franchise fees payable under
15 this Section. Each payment shall be made within forty-five days after the end
16 of the preceding quarter for which payment is being made and shall be
17 accompanied by a statement showing the certificate holder's gross revenues
18 attributable to the local governmental subdivision for that quarter.

19 C. Any supporting statements shall be confidential and exempt from
20 disclosure as proprietary and trade secret information under any provision of
21 state law.

22 D. The amount of a cable service provider's or video service provider's
23 non-subscriber revenues from advertising disseminated through cable service
24 or video service and home shopping services that is allocable to a local
25 governmental subdivision is equal to the total amount of the cable service
26 provider's or video service provider's revenue received from such advertising
27 and home shopping services multiplied by the ratio of the number of
28 subscribers in such municipality or in the unincorporated area of such parish
29 on the preceding January first to the total number of subscribers receiving
30 cable service or video service from the cable service provider or video service

1 provider on that date.

2 E. The holder of a certificate may designate that portion of a subscriber's
3 bill attributable to any franchise fee imposed pursuant to this Chapter and
4 recover such amount from the subscriber as a separate line item on the bill.

5 F. No local governmental subdivision shall levy any tax, license, fee, or
6 other assessment on a cable service provider or video service provider for or in
7 connection with the use of public rights of way other than the franchise fee
8 authorized by this Section or fee authorized by R.S. 45:1370 or a cable franchise
9 fee or other fee imposed upon a cable service provider or video service provider
10 in an existing franchise prior to the effective date of this Chapter. No local
11 governmental subdivision shall levy any other tax, license, fee, or other
12 assessment on a cable service provider or video service provider or its
13 subscribers, which is not generally imposed and applicable to a majority of all
14 other businesses. Nothing in this Subsection shall restrict the right of any local
15 governmental subdivision to impose ad valorem taxes, service fees, sales taxes,
16 or other taxes and fees lawfully imposed on other businesses within such local
17 governmental subdivision.

18 G. The certificate franchise fee authorized by this Section shall be in lieu
19 of any permit fee, encroachment fee, degradation fee, inspection fee, or other fee
20 assessed by a local governmental subdivision on a certificate holder for
21 occupation of or work within its public rights of way.

22 §1367. Franchise fee audits and dispute resolution

23 A. The local governmental subdivision, upon reasonable written request,
24 may review the business records of a cable service provider or video service
25 provider to the extent necessary to ensure payment of the franchise fee in
26 accordance with R.S. 45:1366.

27 B. Any suit with respect to a dispute arising out of or relating to the
28 amount of the franchise fee due to a local governmental subdivision under R.S.
29 45:1366 shall be filed either by the local governmental subdivision seeking to
30 recover an additional amount alleged to be due, or by the certificate holder

1 seeking a refund of an alleged overpayment, in a state or federal court of
2 competent jurisdiction within three years following the end of the month to
3 which the disputed amount relates; however, this time period may be extended
4 by written agreement between the certificate holder and the local governmental
5 subdivision.

6 C. Prior to filing suit, the local governmental subdivision or certificate
7 holder shall give the other party written notice of any dispute not resolved in the
8 normal course of business. Representatives of both parties, with authority to
9 settle the dispute, shall meet within thirty calendar days after receipt of the
10 notice, and thereafter as often as reasonably deemed necessary, to exchange
11 relevant information and attempt to resolve the dispute. If the dispute is not
12 resolved within sixty calendar days after receipt of the notice, either the local
13 governmental subdivision or certificate holder may initiate nonbinding
14 mediation. Good faith participation in and completion of the negotiation and
15 mediation procedures set forth in this Subsection shall be a condition precedent
16 to proceeding with the suit beyond its filing to interrupt the prescriptive period
17 set forth in this Section.

18 D. A local governmental subdivision may contract with a third-party
19 administrator for the collection of the franchise fees and enforcement of the
20 provisions of this Chapter.

21 E. Each party shall bear its own costs and attorney fees incurred in
22 connection with any and all of the activities and procedures set forth in this
23 Section.

24 §1368. Prohibition against build-out requirements

25 No franchising authority, state agency, or political subdivision of the
26 state shall impose any build-out requirements for construction of a cable system
27 or wireline facilities used to distribute video programming services or for cable
28 service or video service deployment on a holder of a certificate, subject to the
29 provisions of Title 48 of the Louisiana Revised Statutes of 1950.

30 §1369. Public, educational, and governmental access programming streams or

1 channels

2 A. Not later than one hundred twenty days after a request by a local
3 governmental subdivision, the holder of a certificate shall provide the local
4 governmental subdivision in which it provides cable service or video service
5 with capacity in its network to allow public, educational, and governmental
6 (PEG) access programming streams or channels for noncommercial
7 programming consistent with this Section.

8 B.(1) The holder of a certificate shall designate a sufficient amount of
9 capability on its cable system or wireline facilities used to distribute video
10 programming services to allow for the provision of a comparable number of
11 PEG access programming streams or channels a local governmental subdivision
12 has activated under the franchise agreement of the incumbent service provider
13 with the most subscribers in such local governmental subdivision as of the
14 effective date of this Chapter.

15 (2) If a local governmental subdivision did not have PEG access
16 programming streams or channels as of the effective date of this Chapter, the
17 cable service provider or video service provider shall furnish, upon written
18 request, capability sufficient to support up to three PEG access programming
19 streams or channels for a local governmental subdivision with a population of
20 at least fifty thousand and up to two PEG access programming streams or
21 channels for a local governmental subdivision with a population of less than
22 fifty thousand. However, the holder may require all local governmental
23 subdivisions served by a single headend or similar facility and requesting PEG
24 access programming streams or channels under this Subsection to jointly use
25 the PEG access programming streams or channels provided in this Subsection.
26 For the purpose of applying the limits in this Subsection, the populations of all
27 such local governmental subdivisions shall be aggregated.

28 (3) The holder of a certificate may be required by a local governmental
29 subdivision to provide one PEG access programming stream or channel in the
30 basic subscription service package or tier offered by the provider. All other

1 PEG access programming streams or channels required by this Section may be
2 located in any subscription package or tier subscribed to by fifty percent or
3 more of customers of a cable service provider or video service provider. The
4 holder may provide any PEG access programming stream required by this
5 Section in either digital or analog format.

6 C. A local governmental subdivision may use one PEG access
7 programming stream or channel without restrictions relating to repeat
8 programming provided in this Section. To qualify for any additional PEG
9 accessing programming stream or channel authorized by this Section, a local
10 governmental subdivision shall certify that the additional PEG access
11 programming stream or channel, upon activation, will be utilized for at least
12 eight continuous hours of non-repeating content per day. If a local
13 governmental subdivision fails to utilize any additional PEG access
14 programming stream or channel for at least eight continuous hours of non-
15 repeating content per day, such PEG access programming stream or channel
16 shall no longer be made available to the local governmental subdivision and
17 may be programmed at the discretion of the cable service provider or video
18 service provider. At such time as the local governmental subdivision can certify
19 to the cable service provider or video service provider a schedule for at least
20 eight continuous hours of non-repeating daily programming, the cable service
21 provider or video service provider shall restore the previously lost
22 programming stream or channel on any tier of service at the certificate holder's
23 sole discretion.

24 D. The operation of any PEG access programming stream or channel
25 provided pursuant to this Section shall be the responsibility of the municipality
26 or the parish receiving the benefit of such programming stream or channel and
27 holder of a certificate bears only the responsibility for the transmission of such
28 programming stream or channel.

29 E. The local governmental subdivision shall ensure that all transmissions
30 of content and programming provided by or arranged by them to be

1 transmitted over a PEG access programming stream or channel by a holder of
 2 a certificate are provided and submitted to the cable service provider or video
 3 service provider in a manner or form that is capable of being accepted and
 4 transmitted by the provider over its network without further alteration or
 5 change in the content or transmission signal and which is compatible with the
 6 technology or protocol utilized by the cable service provider or video service
 7 provider to deliver its cable service or video service.

8 F. Where technically feasible, the incumbent service provider shall, upon
 9 receipt of a written request of a holder of a certificate, negotiate in good faith
 10 to interconnect its cable system or wireline facilities used to distribute video
 11 programming services with the cable system or wireline facilities used to
 12 distribute video programming services of such certificate holder on mutually
 13 acceptable and reasonable terms in order to enable such certificate holder to
 14 gain access to PEG programming. Interconnection may be accomplished by
 15 direct cable microwave link, satellite, or other reasonable method of connection.
 16 No incumbent service provider shall withhold interconnection with another
 17 cable service provider or video service provider.

18 G. A holder of a certificate is not required to interconnect for, or
 19 otherwise to transmit, PEG content that is branded with the logo, name, or
 20 other identifying marks of another cable service provider or video service
 21 provider, and a municipality or parish may require a cable service provider or
 22 video service provider to remove its logo, name, or other identifying marks from
 23 PEG content that is to be made available to another provider.

24 §1370. In-kind contributions; PEG access support

25 A. Local governmental subdivisions are prohibited from imposing in-
 26 kind compensations and grants.

27 B. Notwithstanding any other provision of law to the contrary, a local
 28 governmental subdivision may require all holders of a state-issued certificate
 29 of franchise authority, pursuant to an ordinance adopted by the local
 30 governmental subdivision, to pay PEG access support in an amount up to one-

1 half percent of gross revenues. No payments shall be due pursuant to this
2 Section until the local governmental subdivision notifies the holder of a state-
3 issued certificate of franchise authority, in writing, of the amount owed. The fee
4 shall be uniformly applied to all holders of a state-issued certificate of franchise
5 authority within the local governmental subdivision.

6 C. Payments under this Section shall be made in the same manner as a
7 part of the certificate holder's payment of franchise fees pursuant to R.S.
8 45:1366, and all definitions, exemptions, and administrative provisions
9 applicable to franchise fees shall apply to such payments.

10 D. The holder of a state-issued certificate of franchise authority may
11 designate that portion of a subscriber's bill attributable to any payments
12 required by this Section and recover the amount from the subscriber as a
13 separate line-item on the bill.

14 E. All payments made to a local governmental subdivision under this
15 Section are paid in accordance with 47 U.S.C. 531, 541(a)(4)(B), and
16 542(g)(2)(C) and shall be used by the local governmental subdivision as allowed
17 by federal law only to support the capital costs incurred for the construction
18 and operation of PEG access programming stream or channel content and
19 facilities.

20 F. No franchise fees as required in R.S. 45:1366 shall apply to payments
21 made pursuant to this Section.

22 §1371. Customer service standards

23 Any holder of a state-issued certificate of franchise authority shall
24 comply with 47 CFR 76.309(c). No franchising authority or local governmental
25 subdivision shall have the power to require a holder of a state-issued certificate
26 of franchise authority to comply with any customer service standards other than
27 those set forth in this Section.

28 §1372. Emergency alert services

29 A holder of a state-issued certificate of franchise authority shall comply
30 with the federal Emergency Alert System regulations, as applied by the Federal

1 Communications Commission.

2 § 1373. Indemnification

3 A holder of a certificate of statewide franchise authority shall indemnify,
 4 defend and hold harmless a local governmental subdivision, its officers, agents,
 5 and employees from and against any liability for damages and for any liability
 6 or claims resulting from tangible property damage or bodily injury, including
 7 accidental death, to the extent proximately caused by the holder's negligent
 8 construction, operation, or maintenance of its cable system or wireline facilities
 9 used to distribute video programming services, provided that the local
 10 governmental subdivision shall give the holder written notice of its obligation
 11 to indemnify the local governmental subdivision within one hundred eighty days
 12 of receipt of a claim or action pursuant to this Section and provided that the
 13 holder shall have the right to select counsel of the holder's choice to defend the
 14 claim. Notwithstanding the foregoing, the holder shall not indemnify the local
 15 governmental subdivision for any damages, liability, or claims resulting from
 16 the negligence or willful misconduct of the local governmental subdivision, its
 17 officers, agents, employees, attorneys, consultants, independent contractors or
 18 third parties or for any activity or function conducted by any person or entity
 19 other than the holder in connection with PEG programming.

20 §1374. Local governmental authority

21 A. A local governmental subdivision's authority to regulate the holder
 22 of a certificate is limited to the following items:

23 (1) A requirement that the holder of a certificate which is providing
 24 cable service or video service within the local governmental subdivision register
 25 with the local governmental subdivision and maintain a current point of
 26 contact.

27 (2) The establishment of reasonable guidelines regarding the use of PEG
 28 access programming streams or channels.

29 B. A local governmental subdivision shall allow the holder of a certificate
 30 to install, construct, and maintain a network within public rights of way and

1 shall provide the holder of a certificate with open, comparable,
 2 nondiscriminatory, and competitively neutral access to the public rights of way.
 3 If during the installation, construction, or maintenance of said network, the
 4 holder disturbs any public right of way, the holder shall replace and restore the
 5 public right of way to a condition reasonably comparable to the condition of the
 6 public right of way existing immediately prior to such disturbance. All use of
 7 public rights of way by the holder of a certificate is nonexclusive, and a local
 8 governmental subdivision may not discriminate against the holder of a
 9 certificate regarding any of the following items:

10 (1) The authorization or placement of a network in public rights of way.

11 (2) Access to a building or other property.

12 (3) Utility pole attachment terms.

13 C. Nothing contained in this Chapter shall impair the lawful exercise of
 14 existing police powers of the local governmental subdivisions in which cable
 15 service or video service is delivered, including but not limited to the right to
 16 require construction permits and utility pole attachment agreements.

17 §1375. Discrimination prohibited

18 A. A cable service provider or video service provider that has been
 19 granted a certificate shall not deny access to service to any group of potential
 20 residential subscribers based on the race or income of the residents in the local
 21 area in which such group resides.

22 B. For purposes of determining whether a cable service provider or
 23 video service provider has violated the provisions of Subsection A of this
 24 Section, cost, density, distance, and technological or commercial limitations
 25 shall be taken into account. The inability to serve an end user because a holder
 26 is prohibited from placing its own facilities in a building or property shall not
 27 be found to be a violation of Subsection A of this Section. Use of an alternative
 28 technology that provides a comparable content, service, and functionality shall
 29 not be considered a violation of Subsection A of this Section. This Section may
 30 not be construed as authorizing any general construction or deployment

1 requirements on a cable service provider or video service provider in
2 contravention of R.S. 45:1368.

3 §1376. Compliance

4 If the holder of a certificate is found by a court of competent jurisdiction
5 to be in noncompliance with the requirements of this Chapter, the court shall
6 order the holder of the certificate, within a specified reasonable period of time,
7 to cure the noncompliance. If the holder fails to cure in accordance with the
8 court's order, the court may remedy such noncompliance.

9 §1377. Applicability of other laws

10 A. Nothing in this Chapter shall apply to a local governmental
11 subdivision which has a home rule charter existing or adopted when the
12 Constitution of Louisiana was adopted on April 20, 1974, and which is governed
13 by Article VI, Section 4 of the Constitution of Louisiana. However, a local
14 governmental subdivision operating pursuant to such a home rule charter
15 provision may by ordinance elect to be governed by the provisions of this
16 Chapter.

17 B. With respect to local governmental subdivisions which have home rule
18 charters adopted after the Constitution of Louisiana was adopted on April 20,
19 1974, and which are governed by Article VI, Section 5 of the Constitution of
20 Louisiana and with respect to other local governmental subdivisions without
21 home rule charters, such local governmental subdivisions are denied the
22 authority to adopt ordinances that are inconsistent with the provisions of this
23 Chapter.

24 C. Nothing in this Chapter is intended to alter existing law regarding
25 expropriation of property by a cable service provider or video service provider.

26 §1378. Conforming amendments

27 Except as provided in Title 48 of the Louisiana Revised Statutes of 1950,
28 the provisions of this Chapter supersede any inconsistent provisions of state law,
29 including but not limited to the following:

30 (1) R.S. 9:1253.

1 (2) R.S. 33:4361, 4401, and 4405.

2 (3) R.S. 38:2869, 3087.37, 3087.57, 3087.97, 3087.117, 3087.227, and
3 3087.265.

4 (4) R.S. 45:781(B).

5 Section 2. If any provision of this Act or the application thereof is held invalid, such
6 invalidity shall not affect other provisions or applications of this Act which can be given
7 effect without the invalid provisions or applications, and to this end the provisions of this
8 Act are hereby declared severable.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____