

House Bill 227 (AS PASSED HOUSE AND SENATE)

By: Representatives Lewis of the 15th, Martin of the 47th, Stephens of the 164th, Ehrhart of the 36th, Watson of the 91st, and others

A BILL TO BE ENTITLED

AN ACT

To amend Title 36 of the Official Code of Georgia Annotated, relating to local government, so as to provide for the expedited franchising of cable and video services by the Secretary of State; to provide for a short title; to provide for definitions; to provide franchise options for cable service providers and video service providers; to provide a process for the issuance of a state franchise; to provide for transfers, modifications, and terminations of a state franchise; to provide for franchise fees; to require customer service; to provide for public, educational, and governmental programming under a state franchise; to provide a service outlet to municipalities and counties and complimentary basic cable service or video service to public schools and public libraries over such service outlet; to provide certain limitations on requirements that may be imposed upon holders of a state franchise; to prohibit discrimination towards potential residential subscribers; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended by adding a new chapter to read as follows:

"CHAPTER 76

36-76-1.

This chapter shall be known and may be cited as the 'Consumer Choice for Television Act.'

36-76-2.

As used in this chapter, the term:

(1) 'Advertising and home shopping services revenues' means the amount of a cable service provider or video service provider's nonsubscriber revenues from advertising disseminated through cable service or video service and home shopping services. The

1 amount of such revenues that are allocable to a municipality or county shall be equal to
2 the total amount of the cable service provider or video service provider's revenue
3 received from such advertising and home shopping services multiplied by the ratio of the
4 number of such provider's subscribers located in such municipality or in the
5 unincorporated area of such county to the total number of such provider's subscribers.
6 Such ratio shall be based on the number of such provider's subscribers as of January 1
7 of the current year, except that in the first year in which services are provided, such ratio
8 shall be computed as of the earliest practical date.

9 (2) 'Affected local governing authority' means any municipal governing authority when
10 any part of such municipality is located within the service area and any county governing
11 authority when any part of the unincorporated area of such county is located within the
12 service area.

13 (3) 'Cable service' means the one-way transmission to subscribers of video programming
14 or other programming service and subscriber interaction, if any, which is required for the
15 selection or use of such video programming or other programming service. Cable service
16 shall not include any video programming provided by a provider of commercial mobile
17 service as defined in 47 U.S.C. Section 332(d) or video programming provided as part
18 of and via a service that enable users to access content, information, e-mail, or other
19 services offered over the public Internet.

20 (4) 'Cable service provider' means any person or group of persons:

21 (A) Who provides cable service over a cable system and directly or through one or
22 more affiliates owns a significant interest in such cable system; or

23 (B) Who otherwise controls or is responsible for, through any arrangement, the
24 management and operation of such a cable system.

25 (5) 'Cable system' means a facility consisting of a set of closed transmission paths and
26 associated signal generation, reception, and control equipment that is designed to provide
27 cable service which includes video programming and which is provided to multiple
28 subscribers within a community, but such term shall not include:

29 (A) A facility that serves only to retransmit the television signals of one or more
30 television broadcast stations;

31 (B) A facility that serves subscribers without using any public right of way as defined
32 in this Code section;

33 (C) A facility of a common carrier which is subject, in whole or in part, to the
34 provisions of 47 U.S.C. Sections 201 through 276, except that such facility shall be
35 considered a cable system, other than for purposes of 47 U.S.C. Section 541(c), to the
36 extent such facility is used in the transmission of video programming directly to

1 subscribers, unless the extent of such use is solely to provide interactive on-demand
2 services as that term is defined in 47 U.S.C. Section 522(12);

3 (D) An open video system that complies with 47 U.S.C. Section 573; or

4 (E) Any facility of any electric utility used solely for operating such electric utility
5 system.

6 (6) 'Franchise' means an initial authorization or renewal of an authorization issued by a
7 franchise authority, regardless of whether the authorization is designated as a franchise,
8 permit, license, resolution, contract, ordinance, certificate, agreement, or otherwise, that
9 authorizes the construction or operation of a cable service provider or video service
10 provider's network in the public rights of way.

11 (7) 'Franchise authority' means any governmental entity empowered by federal, state, or
12 local law to grant a franchise. With regard to the holder of a state franchise within the
13 service areas covered by such state franchise, the Secretary of State shall be the sole
14 franchising authority. With respect to a franchise agreement with a municipal or county
15 governing authority, that municipality or county shall be the sole franchising authority
16 within the service areas covered by that local franchise.

17 (8) 'Gross revenues' means all revenues received from subscribers for the provision of
18 cable service or video service, including franchise fees for cable service providers and
19 video service providers, and advertising and home shopping services revenues and shall
20 be determined in accordance with generally accepted accounting principles. Gross
21 revenues shall not include:

22 (A) Amounts billed and collected as a line item on the subscriber's bill to recover any
23 taxes, surcharges, or governmental fees that are imposed on or with respect to the
24 services provided or measured by the charges, receipts, or payments therefor; provided,
25 however, that for purposes of this Code section, such tax, surcharge, or governmental
26 fee shall not include any ad valorem taxes, net income taxes, or generally applicable
27 business or occupation taxes not measured exclusively as a percentage of the charges,
28 receipts, or payments for services;

29 (B) Any revenue, such as bad debt, not actually received, even if billed;

30 (C) Any revenue received by any affiliate or any other person in exchange for
31 supplying goods or services used by the provider to provide cable service or video
32 programming;

33 (D) Any amounts attributable to refunds, rebates, or discounts;

34 (E) Any revenue from services provided over the network that are associated with or
35 classified as noncable or nonvideo services under federal law, including, without
36 limitation, revenues received from telecommunications services, information services
37 other than cable service or video service, Internet access services, or directory or

Internet advertising revenue, including, without limitation, yellow pages, white pages, banner advertisements, and electronic publishing advertising. Where the sale of any such noncable or nonvideo service is bundled with the sale of one or more cable services or video services and sold for a single nonitemized price, the term 'gross revenues' shall include only those revenues that are attributable to cable service or video service based on the provider's books and records; such revenues shall be allocated in a manner consistent with generally accepted accounting principles;

(F) Any revenue from late fees not initially booked as revenues, returned check fees, or interest;

(G) Any revenue from sales or rental of property, except such property as the subscriber shall be required to buy or rent exclusively from the cable service provider or video service provider to receive cable service or video service;

(H) Any revenue received from providing or maintaining inside wiring;

(I) Any revenue from sales for resale with respect to which the purchaser shall be required to pay a franchise fee, provided the purchaser certifies in writing that it shall resell the service and pay a franchise fee with respect thereto; or

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

(9) 'Incumbent service provider' means any cable service provider or video service provider providing cable service or video service, respectively, in a municipality or in an unincorporated area of a county on January 1, 2008.

(10) 'Original programming' means programming produced specifically for or about a municipality or county or citizens thereof and shall include public government meetings. Original programming shall not include character generated messages, video bulletin board messages, traffic cameras, or other passively produced content.

(11) 'PEG' means public, educational, or governmental.

(12) 'Public right of way' means the area in, on, along, over, or under the public roads that are part of the municipal or county road system or the state highway system.

(13) 'Service area' means the geographic territory within a municipality or unincorporated area of a county where a cable service provider or video service provider provides or has proposed to offer cable service or video service pursuant to a franchise.

(14) 'Subscriber' means any person or entity lawfully receiving video service from a video service provider or cable service from a cable service provider.

(15) 'Video programming' means programming provided by, or generally considered comparable to programming provided by, a television broadcast station, as set forth in 47 U.S.C. Section 522(20).

(16) 'Video service' means the provision of video programming through wireline facilities located at least in part in the public rights of way without regard to delivery technology, including Internet protocol technology. This term shall not include any video programming provided by a provider of commercial mobile service as defined in 47 U.S.C. Section 332(d) or video programming provided as part of and via a service that enables users to access content, information, e-mail, or other services offered over the public Internet.

(17) 'Video service provider' means an entity providing video service as defined in this Code section. This term shall not include a cable service provider.

36-76-3.

(a)(1) Any entity or person seeking to provide cable service or video service in this state after January 1, 2008, at the discretion of the cable service provider or video service provider, may elect from among the franchise options as set forth in this Code section. A cable service provider or video service provider shall not provide cable service or video service without a franchise obtained pursuant to this chapter.

(2) A cable service provider or video service provider may elect to negotiate a local cable service or video service franchise agreement with a municipal or county franchise authority duly authorized under the laws of Georgia and may enter into a negotiated cable television franchise agreement in accordance with Title VI of the Communications Act of 1934, as amended, 47 U.S.C. Section 521 et seq., or a video service franchise agreement in accordance with applicable state and federal law that establishes the terms and conditions for the franchise agreement within the jurisdictional limits of that municipality or county. A local cable service or video service franchise agreement entered into after January 1, 2008, shall remain in force and effect through its expiration date notwithstanding subsection (g) of Code Section 36-76-4.

(3) A cable service provider or video service provider may elect to adopt the terms of a negotiated franchise agreement entered into between a cable service provider or video service provider and a municipal or county franchise authority in the service area in which the cable service provider or video service provider desires to provide service. The municipal or county franchise authority shall be required to enter into any such negotiated franchise agreement upon the same terms and conditions to any requesting cable service provider or video service provider. A local cable service or video service franchise agreement that is adopted by a cable service provider or video service provider after January 1, 2008, shall remain in force and effect through its expiration date notwithstanding subsection (g) of Code Section 36-76-4.

(4) A cable service provider or video service provider may elect after January 1, 2008, to file an application for a state franchise in one or more specified service areas with the Secretary of State in accordance with the procedures set forth in this chapter.

(b) The alternatives in subsection (a) of this Code section shall not be mutually exclusive. A cable service provider or video service provider may elect after January 1, 2008, to negotiate with a municipal or county franchise authority to enter into a franchise agreement within a specified service area and may also obtain a state franchise for a different service area. A cable service provider or video service provider shall not operate under a franchise agreement with a municipal or county governing authority and a state franchise from the Secretary of State for the same service area.

36-76-4.

(a) To receive a state franchise, a cable service provider or video service provider shall file an application for a state franchise with the Secretary of State, with a copy of such application provided simultaneously to each affected municipal or county governing authority at least 45 days prior to offering cable service or video service to subscribers within a specified service area.

(b) The Secretary of State may impose a fee not to exceed \$500.00 for a state franchise application and a fee not to exceed \$250.00 for an amendment to a state franchise.

(c) The application for a state franchise shall consist of an affidavit signed by an officer or general partner of the applicant that contains each of the following:

(1) An affirmative declaration that the applicant shall comply with all applicable federal and state laws and regulations, including municipal and county ordinances and regulations regarding the placement and maintenance of facilities in the public right of way that are generally applicable to all users of the public right of way and specifically including Chapter 9 of Title 25, the 'Georgia Utility Facility Protection Act';

(2) A description of the applicant's service area, which description shall be sufficiently detailed so as to allow a local government to respond to subscriber inquiries, including the name of each municipal or county governing authority within the service area. For the purposes of this paragraph, an applicant may, in lieu of or as supplement to a written description, provide a map on 8 1/2 by 11 inch paper that is clear and legible and that fairly depicts the service area by making reference to the municipal or county governing authority to be served. If the geographical area is less than an entire municipality or county, the map shall describe the boundaries of the geographic area to be served in clear and concise terms;

(3) The location of the applicant's principal place of business, the name or names of the principal executive officer or officers of the applicant, information concerning payment locations or addresses, and general information concerning equipment returns; and

(4) Certification that the applicant is authorized to conduct business in the State of Georgia and that the applicant possesses satisfactory financial and technical capability to provide cable service or video service and a description of such capabilities. Such certification shall not be required from an incumbent service provider or any cable service provider or video service provider that has wireline facilities located in the public right of way as of January 1, 2008; and

(5) Notice to the affected local governing authority of its right to designate a franchise fee pursuant to Code Section 36-76-6.

(d) If an application is incomplete, the Secretary of State shall notify the applicant within ten days of the receipt of such application and shall provide the applicant with a reasonable period of time in which to provide a complete application. If no such notification is made within ten days of the receipt of the application, the application shall be deemed complete. Within 45 days of the receipt of a completed application, the Secretary of State shall, except as set forth in subsection (f) of this Code section, issue a state franchise that contains the following:

(1) A nonexclusive grant of authority to provide cable service or video service as requested in the application;

(2) A nonexclusive grant of authority to construct, maintain, and operate facilities along, across, or on the public right of way in the delivery of cable service or video service, subject to applicable federal and state laws and regulations, including municipal and county ordinances and regulations, regarding the placement and maintenance of facilities in the public right of way that are generally applicable to all users of the public right of way and specifically including Chapter 9 of Title 25, the 'Georgia Utility Facility Protection Act'; and

(3) The expiration date of the state franchise, which shall be ten years from the date of issuance, subject to renewal.

(e) The failure of the Secretary of State to issue a state franchise within 45 days of the receipt of a completed application from an incumbent service provider or a cable service provider or video service provider that has wireline facilities located in any public right of way as of January 1, 2008, shall constitute issuance of the requested state franchise to the applicant without further action required by the applicant. The failure of the Secretary of State to issue a state franchise within 45 days of the receipt of a completed application from a cable service provider or video service provider that does not have an existing franchise with a municipal or county governing authority or that does not have wireline facilities

located in any public right of way as of January 1, 2008, shall constitute temporary issuance of the requested state franchise to the applicant subject to the provisions of subsection (f) of this Code section.

(f) A municipal or county governing authority that reasonably believes an applicant that has not yet accessed rights of way in that municipality or unincorporated area of a county and does not possess satisfactory financial and technical capability to provide cable service or video service or is not duly authorized to conduct business in Georgia shall object to the issuance of a state franchise before it is officially issued by the Secretary of State. If a municipal or county governing authority objects to the issuance of a state franchise on these grounds, the Secretary of State shall consider whether the objection is well founded and shall make a determination as to whether to grant the state franchise notwithstanding the objection or to deny or suspend the application pending the receipt of information sufficient to demonstrate the applicant has satisfactory financial and technical capability. If the Secretary of State has not acted on the objection of a municipal or county governing authority's objection and a state franchise is issued as set forth in subsection (e) of this Code section, then such temporary issuance of the state franchise shall be subject to the Secretary of State's determination on the objection.

(g)(1) At any time after January 1, 2008, an incumbent service provider may file an application for a state franchise pursuant to this Code section with the Secretary of State with a copy provided to each affected municipal or county governing authority except as set forth in paragraphs (2) and (3) of subsection (a) of Code Section 36-76-3. Upon the Secretary of State issuing such state franchise, any existing franchise for the service area covered by the state franchise shall, subject to the continuation of PEG support obligations in paragraph (4) of this subsection, terminate and be of no further force or effect.

(2) An incumbent service provider that elects to terminate an existing franchise for the service area covered by the state franchise under this subsection shall remain 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.

(3) As used in this subsection, the term 'private person' shall not include:

(A) The municipal or county governing authority that issued the terminated local franchise;

(B) A political subdivision, government agency, or authority of the state not described in subparagraph (A) of this paragraph; or

(C) Any official, agent, or employee acting in an official capacity of the municipal or county governing authority that issued the terminated local franchise.

1 (4) An incumbent service provider that elects to terminate a franchise under this
2 subsection shall continue to provide PEG access support, as such existed on January 1,
3 2007, under the same terms as the terminated local franchise had it not been terminated
4 until the local franchise would have expired under its own terms.

5 (5) Notwithstanding a termination of a local franchise pursuant to this subsection, a
6 municipality or county shall be entitled to operate its existing PEG channel or channels,
7 as such existed on January 1, 2007, relating to the number of channels and the usage
8 criteria for such channels under the same terms as the terminated local franchise had it
9 not been terminated, pursuant to this subsection, until July 1, 2012. The 12 month
10 development period for PEG channels set forth in subsection (a) of Code Section 36-76-8
11 shall not apply to existing PEG channels operating under the entitlement provisions of
12 this subsection.

13 (6) The 12 month development period for PEG channels set forth in subsection (a) of
14 Code Section 36-76-8 shall not apply to channels being operated at the time that any
15 holder of a state franchise adopts or renews a state franchise after July 1, 2012.

16 (7) An incumbent service provider that elects to terminate a franchise under this
17 subsection, shall, until July 1, 2012, continue to provide access on the nonbasic or digital
18 tier to any municipality or county that has an activated public safety training channel as
19 of January 1, 2007. This channel shall be used exclusively for the purpose of training
20 public safety personnel. After July 1, 2012, the state franchise holder shall be entitled to
21 use other reasonable, readily accessible means to accomplish the purpose of the channel.

22 (8) Each holder of a state franchise shall have the obligation to provide access to the
23 same number of PEG channels pursuant to Code Section 36-76-8 and the additional PEG
24 support cash payments specified in this paragraph for PEG access facilities in a service
25 area as the incumbent service provider with the most subscribers in such service area as
26 of January 1, 2007, which obligation shall continue until the local franchise would have
27 expired under its own terms as specified in paragraph (4) of this subsection; provided,
28 however, that if a local franchise would have expired before July 1, 2012, the holder of
29 a state franchise shall continue to provide access to the same number of PEG channels
30 until July 1, 2012, as provided in paragraph (5) of this subsection. To the extent such
31 incumbent service provider provides PEG access support during said period in the form
32 of periodic payments to the municipal or county governing authority equal to a
33 percentage of gross revenue or a prescribed per subscriber amount, the state franchise
34 holder shall be obligated to make the same periodic payments to the governing authority
35 at the same time and equal to the same percentage of gross revenue or prescribed per
36 subscriber amount. To the extent such incumbent service provider provides PEG access
37 support to the applicable governing authority during said period in the form of a lump

1 sum payment that remains unsatisfied as of January 1, 2008, the holder of a state
2 franchise shall be obligated to provide a lump sum payment to said authority based on its
3 proportion of the total number of cable service and video service subscribers of all service
4 providers in such service area. No payments shall be due under this paragraph until the
5 municipality or county notifies the respective providers, in writing, of the percentage of
6 gross revenues, the per subscriber amount, or the lump sum payment amount and the
7 expiration date of the local franchise obtaining such obligations. The holder of a state
8 franchise may designate that portion of the subscriber's bill attributable to any fee
9 imposed pursuant to this paragraph as a separate item on the bill and recover such amount
10 from the subscriber.

11 36-76-5.

12 (a) A state franchise shall be fully transferable to any successor in interest to the applicant.
13 A notice of transfer shall be filed by the transferee with the Secretary of State with a copy
14 provided to each affected municipal or county governing authority within 45 days of such
15 transfer. The transfer notification shall consist of an affidavit signed by an officer or
16 general partner of the transferee that contains each of the following:

17 (1) An affirmative declaration that the applicant shall comply with all applicable federal
18 and state laws and regulations, including municipal and county ordinances and
19 regulations, regarding the placement and maintenance of facilities in any public right of
20 way that are generally applicable to all users of the public right of way and specifically
21 including Chapter 9 of Title 25, the 'Georgia Utility Facility Protection Act';

22 (2) A description of the transferee's service area, including the name of each municipal
23 or county governing authority within the service area;

24 (3) The location of the transferee's principal place of business and the name or names
25 of the principal executive officer or officers of the transferee; and

26 (4) A description of material changes, if any, of the information set forth in the
27 applicant's initial application for a state franchise.

28 (b) Any outstanding liabilities that have become due and are still owed to a municipal or
29 county governing authority under a state franchise issued pursuant to this chapter shall be
30 fully transferable under this Code section to any successor in interest to the applicant.

31 (c) The failure of the Secretary of State to issue an amended state franchise within 45 days
32 of the receipt of a completed transfer notice shall constitute issuance of the requested
33 amended state franchise to the transferee without further action required.

34 (d) A cable service provider or video service provider may modify its service area covered
35 by the state franchise by notifying the Secretary of State of changes to the service area,
36 with a copy provided to each affected municipal or county governing authority, at least 20

1 days prior to the effective date of such change. Such notification shall contain a
2 geographic description of the new service area or areas and a list of each municipal or
3 county governing authority within the service area.

4 (e) A state franchise issued pursuant to this chapter may be terminated by the cable service
5 provider or video service provider by submitting a notice of termination to the Secretary
6 of State with a copy provided to each affected municipal or county governing authority.
7 Such notice shall identify the cable service provider or video service provider, the affected
8 service area, and the effective date of such termination, which shall not be more than 60
9 days from the date of filing the notice of termination.

10 36-76-6.

11 (a) The holder of a state franchise, whether a cable service provider or a video service
12 provider, shall pay to each affected local governing authority which complies with this
13 Code section a franchise fee which shall not exceed the maximum percentage rate
14 permitted in 47 U.S.C. Section 542(b) of such holder's gross revenues received from the
15 provision of cable service or video service to subscribers located within such holder's
16 service area.

17 (1) Each affected local governing authority or its authorized designee shall provide
18 written notice to the Secretary of State and each applicant for or holder of a state
19 franchise with a service area located within that affected local governing authority's
20 jurisdiction of the franchise fee rate that applies to the applicant for or holder of such state
21 franchise. The applicant for or holder of a state franchise shall start assessing the
22 franchise fee within 15 days of receipt of written notice from the affected local governing
23 authority or its authorized designee and shall not be required to pay such franchise fee
24 until the expiration of 15 days after receipt of such written notice. Any incumbent service
25 provider who obtains a state franchise under paragraph (1) of subsection (g) of Code
26 Section 36-76-4 shall pay its existing franchise fee during the 15 day period after receipt
27 of written notice of the new fee. The franchise fee rate shall be uniformly applicable to
28 all cable service providers and video service providers that obtain a state franchise within
29 the affected local governing authority. For purposes of this Code section, an authorized
30 designee is an agent authorized by charter or other act of the affected local governing
31 authority.

32 (2) Any affected local governing authority may change the franchise fee applicable to
33 holders of a state franchise once every two years. The affected local governing authority
34 or its authorized designee shall provide written notice to the Secretary of State and the
35 applicants for or holders of a state franchise with a service area within that affected local
36 governing authority's jurisdiction of the new franchise fee rate. The holder of a state

franchise shall start assessing the new franchise fee within 45 days of receipt of written notice of the change from the affected local governing authority or its authorized designee. The franchise fee rate shall be uniformly applicable to all cable service providers and video service providers that obtain a state franchise within the affected local governing authority's jurisdiction.

(b) Such franchise fee shall be paid directly to each affected local governing authority within 30 days after the last day of each calendar quarter. Such payment shall be considered complete if accompanied by a statement showing, for the quarter covered by the payment:

(1) The aggregate amount of the state franchise holder's gross revenues, specifically identifying subscriber and advertising and home shopping services revenues under this chapter insofar as the franchise holder's existing billing systems include such capability, attributable to such municipality or unincorporated areas of the county; and

(2) The amount of the franchise fee payment due to such municipality or county.

In the event that franchise fees are not paid on or before the dates specified above, then the affected local governing authority shall provide written notice to the franchise holder giving the cable service provider or video service provider 15 days from the date of the franchise holder's receipt of such notice to cure any such nonpayment. In the event franchise fees are not remitted to the affected local government authority postmarked on or before the expiration of the 15 day cure period, then the holder of the state franchise shall pay interest thereon at a rate of 1 percent per month to the affected local governing authority. If the 15 day cure period expires on Saturday, Sunday, or a legal holiday, the due date shall be the next business day. Moreover, the franchise holder shall not be assessed interest on late payments if franchise payments were submitted in error to a neighboring local governing authority.

(c) Each affected local governing authority may, no more than once annually, audit the business records of the state franchise holder to the extent necessary to ensure payment in accordance with this Code section. For purposes of this subsection, an audit shall be defined as a comprehensive review of the records of the holder of a state franchise. Once any audited period of a state franchise holder has been the subject of a requested audit, such audited period of such state franchise holder shall not again be the subject of any audit. In the event of a dispute concerning the amount of the franchise fee due to an affected local governing authority under this Code section, an action may be brought in a court of competent jurisdiction by an affected local governing authority seeking to recover an additional amount alleged to be due or by a state franchise holder seeking a refund of an alleged overpayment; provided, however, that any such action shall be brought within three years following the end of the quarter to which the disputed amount relates. Such time

1 period may be extended by written agreement between the state issued franchise holder and
2 such affected local governing authority. Each party shall bear the party's own costs
3 incurred in connection with any such examination or dispute. In the event that an affected
4 local governing authority files an action to recover alleged underpayments of franchise fees
5 and a court of competent jurisdiction determines the cable service provider or video service
6 provider has underpaid franchise fees due for any 12 month period by 10 percent or more,
7 the cable service provider or video service provider may be required to pay the affected
8 local governing authority its reasonable costs associated with the audit along with any
9 franchise fee underpayments; provided, however, late payments shall not apply.

10 (d) The statements made pursuant to subsection (b) of this Code section and any records
11 or information furnished or disclosed by a cable service provider or video service provider
12 to an affected local governing authority pursuant to subsection (c) of this Code section shall
13 be exempt from public inspection under Code Section 50-18-70.

14 (e) No acceptance of any payment shall be construed as a release or as an accord and
15 satisfaction of any claim an affected local governing authority may have for further or
16 additional sums payable as a franchise fee.

17 (f) Any amounts overpaid by the holder of a state franchise shall be deducted from future
18 franchise payments.

19 (g) The holder of a state franchise may designate that portion of a subscriber's bill
20 attributable to any franchise fee imposed pursuant to this Code section as a separate item
21 on the bill and recover such amount from the subscriber; provided, however, that such
22 separate listing shall be referred to as a 'franchise' or a 'franchise fee.'

23 (h) No affected local governing authority shall levy any additional tax, license, fee,
24 surcharge, or other assessment on a cable service provider or video service provider for or
25 with respect to the use of any public right of way other than the franchise fee authorized
26 by this Code section. Nor shall an affected local governing authority levy any other tax,
27 license, fee, or assessment on a cable service provider or video service provider or its
28 subscribers that is not generally imposed and applicable to a majority of all other
29 businesses. The franchise fee authorized by this Code section shall be in lieu of any permit
30 fee, encroachment fee, degradation fee, or other fee that could otherwise be assessed on a
31 state issued franchise holder for the holder's occupation or work within the public right of
32 way; provided, however, that nothing in this Code section shall restrict the right of any
33 municipal or county governing authority to impose ad valorem taxes, sales taxes, or other
34 taxes lawfully imposed on a majority of all other businesses within such municipality or
35 county.

1 36-76-7.

2 (a) The holder of a state franchise shall comply with the customer service standards as set
3 forth in 47 C.F.R. 76.309(c). No franchising authority shall have the power to require the
4 holder of a state franchise to comply with any customer service standards other than those
5 set forth in this Code section.

6 (b) Except as provided in paragraph (2) of subsection (c) of this Code section, each
7 affected local governing authority shall receive and handle complaints from subscribers
8 of the holder of a state franchise that reside in the affected local governing authority's
9 jurisdiction.

10 (c)(1) By December 31, 2007, the Governor's Office of Consumer Affairs shall conduct
11 a rulemaking to establish a uniform set of rules, which may include fines and penalties,
12 pursuant to which an affected local governing authority shall resolve subscriber
13 complaints. Said rules shall include a requirement that the cable service provider or
14 video service provider participate in mandatory nonbinding mediation with the affected
15 local governing authority and the subscriber if the issue cannot be resolved between the
16 cable service provider or video service provider and the subscriber. Said rules shall apply
17 only until 50 percent of the potential subscribers within an affected local governing
18 authority are offered service by two or more cable service providers or video service
19 providers holding a state franchise or a local franchise.

20 (2) After such time as 50 percent of the potential subscribers within an affected local
21 governing authority are being offered service by two or more cable service providers or
22 video service providers holding a state franchise or a local franchise, an affected local
23 governing authority may, in its discretion, by the adoption of a resolution or ordinance,
24 discontinue receiving and handling all subscriber inquires, billing issues, and other
25 complaints for state franchise holders. Notwithstanding any other provision of law,
26 where an affected local governing authority discontinues receiving and handling
27 subscriber inquires, billing issues, and other complaints relating to state franchise holders
28 by adoption of a resolution or ordinance pursuant to this paragraph, bills to subscribers
29 by cable service providers or video service providers holding a state franchise shall not
30 include the contact information of such affected local governing authority for the purpose
31 of directing or initiating complaints or making other such subscriber inquires.

32 36-76-8.

33 (a) No later than 12 months after receipt of a written request by a municipal or county
34 governing authority, the holder of a state franchise shall designate capacity in its network
35 to allow for the airing of noncommercial PEG programming required by this Code section.

(b)(1) Subject to the usage criteria set forth in this subsection, a municipal or county governing authority that does not have PEG access channels activated under the incumbent service provider's franchise agreement as of January 1, 2008, may request a sufficient amount of capacity on its network to support up to three PEG channels for a municipality in this state having a population of 50,000 or more according to the United States decennial census of 2000 or any future such census or an unincorporated area of a county which is located in a county in this state having a population of 50,000 or more according to the United States decennial census of 2000 or any future such census or up to two PEG channels for a municipality in this state having a population of 50,000 or less according to the United States decennial census of 2000 or any future such census or an unincorporated area of a county which is located in a county in this state having a population of 50,000 or less according to the United States decennial census of 2000, and the cable service provider or video service provider shall designate such sufficient amount of capacity. No cable service provider or video service provider shall be required to provide more than three PEG access channels on its network within a municipality or unincorporated area of a county if there does not exist at the time of the state franchise more than three active PEG channels in such municipality or unincorporated area of the county.

(2) To qualify for the first PEG channel on the basic or analog tier of service, the written request of the municipality or county shall include a certification that it has produced at least 15 hours of nonduplicative original programming for production in the first month of operation and that the municipality or county shall continue to produce at least 15 hours of nonduplicative original programming for each month that the channel is provided.

(3) Alternatively, to qualify for the first PEG channel on the basic or analog tier of service, two or more municipalities or counties may collectively include a certification that they have produced at least 15 hours of nonduplicative original programming for production in the first month of operation and that the municipalities or counties shall continue to produce at least 15 hours of nonduplicative original programming for each month that the channel is provided.

(4) To qualify for a second PEG channel on the basic or analog tier of service, the municipality or county shall certify that the first channel is being substantially utilized, and that upon activation, the second PEG channel shall also be substantially utilized. For purposes of this subsection, PEG channels shall be considered 'substantially utilized' when 12 continuous hours of content are programmed on that channel each calendar day. In addition, at least 75 percent of the 12 hours of programming for each business day over each calendar quarter, on average, shall be nonduplicative programming. Nonduplicative

1 programming shall include the first three broadcasts in a day of a meeting of an elected
2 government body.

3 (5) To qualify for a third PEG channel, a municipality in this state having a population
4 of 50,000 or more according to the United States decennial census of 2000 or any future
5 such census or an unincorporated area of a county which is located in a county in this
6 state having a population of 50,000 or more according to the United States decennial
7 census of 2000 or any future such census shall certify that the channel shall be
8 programmed for at least eight continuous hours of nonduplicative content per day. The
9 third PEG channel shall only be available on the nonbasic digital tier.

10 (6) Any municipality or county that has not obtained a second PEG channel on the basic
11 or analog tier may qualify for a second PEG channel on the nonbasic digital tier by
12 certifying that the channel shall be programmed for at least eight continuous hours of
13 nonduplicative content per day.

14 (7) Any PEG channel capability provided pursuant to this Code section that does not
15 comply with the usage criteria set forth in this subsection or is not substantially utilized
16 by the municipality or county shall no longer be made available after reasonable notice
17 is provided to the municipality or county but may be programmed at the franchise
18 holder's discretion. At such time as the municipality or county certifies to the franchise
19 holder that it shall meet the usage criteria for that particular channel, the cable service
20 provider or video service provider shall restore the previously lost channel. However, the
21 franchise holder shall be under no obligation to carry that channel on a basic or analog
22 tier.

23 (c) Upon request by a municipality or county that does not have an activated PEG channel,
24 the state franchise holder shall provide access to one nonexclusive PEG channel for the
25 purpose of providing public, educational, and government programming. This
26 nonexclusive channel shall be available as an additional option to municipalities and
27 counties and shall not eliminate the requirements of subsection (b) of this Code section.

28 (d) In the event that the provision of video service and cable service is federally mandated
29 to be digitally provided, the franchise holder shall be entitled to satisfy the PEG obligations
30 by locating the channels on any channel provided in the basic subscription service offered
31 by the provider.

32 (e) Municipalities, counties, and cable service providers and video service providers shall
33 cooperate in the sharing of channel capacity to provide PEG access for municipalities and
34 counties served by the cable service provider or video service provider.

35 (f) The holder of a state franchise shall designate capacity on its system sufficient to allow
36 the provision of the same number of PEG access channels that a municipal or county

governing authority has activated under the incumbent service provider's franchise agreement as of January 1, 2008.

(g) The operation of any PEG access channel provided pursuant to this Code section and the production of programming thereon, including all capital costs and costs of production, shall be the responsibility of the municipality or the county receiving the benefit of such channel, and the holder of a state franchise shall only have the responsibility to transmit such channel to subscribers. If the holder elects not to seek interconnection with the incumbent under subsection (i) of this Code section or if the incumbent service provider and the holder of a state franchise cannot reach mutual agreement on interconnection terms, the holder of a state franchise shall be responsible for providing one location of connectivity to each PEG access channel up to the first 200 feet from the holder's activated wireline video programming distribution facility located in the holder's designated service area.

(h) The municipality or the county shall ensure that all transmissions of content and programming provided by or arranged by them to be transmitted over a PEG channel by a holder of a state franchise are provided and submitted to the cable service provider or video service provider in a manner or form that is capable of being accepted and transmitted by such cable service provider or video service provider over its system 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. The provision of PEG content to the cable service provider or video service provider shall constitute authorization for such cable service provider or video service provider to carry such content on the PEG channel of the municipality or county including, at the cable service provider or video service provider's option, providing such content beyond the jurisdictional boundaries of the municipality or county to the extent permitted by federal law.

(i) Where technically feasible, the holder of a state franchise and an incumbent service provider shall use reasonable efforts to interconnect their systems on mutually acceptable and reasonable terms for the purpose of providing PEG programming. Interconnection may be accomplished by direct cable microwave link, satellite, or other reasonable method of connection. Holders of a state franchise and incumbent service providers shall not unreasonably withhold interconnection of PEG channels.

(j) A holder of a state franchise shall not be required to interconnect for or otherwise transmit commercial PEG programming content or PEG content that is branded with the logo, name, or other identifying marks of another cable service provider or video service provider, and a municipality or county may require a cable service provider or video

1 service provider to remove its logo, name, or other identifying marks from PEG content
2 that is to be made available to another provider.

3 36-76-9.

4 A cable service provider or video service provider shall, upon written request by a
5 municipality or county, install, at no charge, one service outlet to a demarcation point
6 located on the outside of any designated municipal or county building or multibuilding
7 complex, provided such building demarcation point is within 125 feet from the cable
8 service provider or video service provider's activated distribution point of connection. A
9 cable service provider or video service provider shall not be required to extend its facilities
10 beyond the appropriate demarcation point located outside the building or to perform any
11 inside wiring. The cable service provider or video service provider shall provide
12 complimentary basic cable service or video service to public schools and public libraries
13 over that one service outlet free of charge, which service shall not be used for commercial
14 purposes. The cable service provider or video service provider shall provide
15 complimentary basic cable service or video service to public buildings other than public
16 schools and public libraries only to the extent such a complimentary service arrangement
17 existed under the terms of a local franchise agreement in effect as of January 1, 2007, and
18 shall continue only until the local franchise agreement would have expired under its own
19 terms; provided, however, that such provider shall not be precluded from providing such
20 additional complimentary service at its option. The municipality or county may not receive
21 service at the same building from more than one cable service provider or video service
22 provider at a time under this Code section.

23 36-76-10.

24 No franchising authority, state agency, or political subdivision of the state shall impose any
25 build-out requirement on system construction or service deployment on a holder of a state
26 franchise. This chapter shall occupy the entire field of franchising or otherwise regulating
27 cable service and video service. An affected local governing authority's power to regulate
28 the holder of a state franchise shall be limited to:

29 (1) A requirement that the holder of a state franchise who is providing cable service or
30 video service within the municipality or unincorporated area of the county shall notify
31 each affected local governing authority at least ten days before providing service in such
32 municipality or county. A municipal or county governing authority may require the
33 holder of a state franchise to update the description of the service area provided in the
34 application for a state franchise annually and may also require the holder of a state

franchise to maintain a point of contact that shall be available during normal business hours;

(2) The establishment of reasonable guidelines regarding the use of PEG access channels;

(3) The lawful and reasonable exercise of the police powers of the municipal or county governing authority to the extent reasonably necessary to protect the health, safety, and welfare of the public;

(4) The enactment and enforcement of lawful and reasonable laws and rules and municipal or county ordinances and regulations concerning excavation, permitting, bonding requirements, indemnification requirements, and placement and maintenance of facilities in any public right of way that are generally applicable to all users of any public right of way, except to the extent specifically precluded by subsection (h) of Code Section 36-76-6; and

(5) The lawful and reasonable exercise of the rights established in this chapter.

36-76-11.

(a) A holder of a state franchise shall not deny access to service to any group of potential residential subscribers because of the income of the residents in the local area in which such group resides.

(b) For purposes of determining whether a cable service provider or video service provider has violated subsection (a) of this Code section, cost, density, distance, and technological or commercial limitations shall be taken into account. An alleged violation of subsection (a) of this Code section shall only be considered within the description of the service area set forth in an application or amended application for a state franchise. The inability to serve an end user because a holder is prohibited from placing its own facilities in a building or property shall not be found to be a violation of subsection (a) of this Code section. Use of an alternative technology or service arrangement that provides comparable content, service, and functionality shall not be considered a violation of subsection (a) of this Code section. This Code section shall not be construed as authorizing any build-out requirements on a cable service provider or video service provider.

(c) Any potential residential subscriber or group of residential subscribers who believes it is being denied access to services in violation of subsection (a) of this Code section may file a complaint with the affected local governing authority, along with a clear statement of the facts and the information upon which it is relying to support the complaint. Upon receipt of any such complaint, the affected local governing authority shall serve a copy of the complaint and supporting materials upon the subject cable service provider or video service provider, which shall have 60 days after receipt of such information to submit a

1 written answer and any other relevant information the provider wishes to submit to the
2 affected local governing authority in response to the complaint. If the affected local
3 governing authority is not satisfied with the response, the affected local governing authority
4 shall compel the cable service provider or video service provider to participate in
5 nonbinding mediation. If the mediation does not resolve the matter to the satisfaction of
6 the affected local governing authority, the affected local governing authority may file a
7 complaint with a court of competent jurisdiction. No affected local governing authority
8 shall file an action in court without having participated in a mediation of the complaint.
9 If such court finds that the holder of a state franchise is in material noncompliance with this
10 Code section, the holder shall have a reasonable period of time, as specified by the court,
11 to cure such noncompliance. The court may also award the affected local governing
12 authority its reasonable costs and attorneys fees in seeking enforcement of subsection (a)
13 of this Code section."

14 **SECTION 2.**

15 This Act shall become effective on July 1, 2007.

16 **SECTION 3.**

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