

HOUSE No. 3385

By Mr. Vallee of Franklin, petition of James E. Vallee and Harold P. Naughton, Jr. relative to consumer choice and competition for cable service. Telecommunications, Utilities and Energy.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT PROMOTING CONSUMER CHOICE AND COMPETITION FOR CABLE SERVICE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 New Chapter 166B; State-issued Cable Franchising.
- 2 State-issued Cable Franchising and Regulation.
- 3 1. Findings.
- 4 *Whereas*, Massachusetts' consumers benefit from expanded
- 5 choice and competition for cable television services, and
- 6 *Whereas*, Competition in the provisioning of cable service is
- 7 emerging with the convergence of preexisting and new technologies
- 8 for providing voice, video and data services, which results in
- 9 increased investment in the state, lower prices, increased consumer
- 10 choice and improved service offerings for consumers, and
- 11 *Whereas*, Increased investment and the potential for competition
- 12 in the cable service market through the provisioning of new commu-
- 13 nications services and deployment of advanced communications
- 14 infrastructure, including fiber optic technologies, further enhances
- 15 economic opportunities, smart growth, the delivery of health care
- 16 services, improved public safety, education and human services and
- 17 the overall health and well being of the residents of the Common-
- 18 wealth, and
- 19 *Whereas*, State-issued franchises for the provision of cable service
- 20 will promote and facilitate the deployment of advanced technologies
- 21 and new services to all classes of communities and protect Massa-
- 22 chusetts' ability to compete in the national and international market-
- 23 place for industry and jobs, and

24 *Whereas*, Modifying existing cable service regulation through the
25 enactment of new standards and procedures that provide consumers
26 with expedited access to a competitive facilities-based cable market
27 is warranted in this state, and

28 *Whereas*, Current cable franchise requirements in the Common-
29 wealth have acted as a barrier to entry to new facilities-based cable
30 operators and have delayed the development of viable competition in
31 the cable market,

32 The General Court finds that a standardized franchising process
33 that speeds innovation, technology deployment, and competition
34 while sustaining local programming via public, education and
35 government channels through a single, predictable set of consumer-
36 supported fees is in the public interest.

37 2. Definitions.

38 The following words and phrases when used in this chapter shall
39 have the meanings given to them in this section unless the context
40 clearly indicates otherwise:

41 “Cable operator.” Any person or group of persons (A) who
42 provides cable service over a cable system and directly or through
43 one or more affiliates owns a significant interest in such cable
44 system, or (B) who otherwise controls or is responsible for, through
45 any arrangement, the management and operation of such a cable
46 system, as set forth in 47 U.S.C. §522(5).

47 “Cable service.” The one-way transmission to subscribers of
48 video programming; or other programming service, and subscriber
49 interaction, if any, which is required for the selection or use of
50 such video programming or other programming service, as set forth
51 in 47 U.S.C. Section 522(6). This definition does not include any
52 video programming provided by a commercial mobile service
53 provider as defined in 47 U.S.C. §332(d).

54 “Cable system.” Any facility, consisting of a set of closed trans-
55 mission paths and associated signal generation, reception and control
56 equipment that is designed to provide cable service which includes
57 video programming and which is provided to multiple subscribers
58 within a community, as set forth in 47 U.S.C. §522(7), but such term
59 does not include:

60 (1) A facility that serves only to retransmit the television signals
61 of one or more television broadcast stations;

62 (2) A facility that serves subscribers without using any public
63 right-of-way;

64 (3) A facility of a common carrier which is subject, in whole or in
65 part, to the provisions of Title II of the Communications Act
66 of 1934, 47 U.S.C. §201 et seq., except that such facility shall be
67 considered a cable system (other than for purposes of 47 U.S.C.
68 §541(c)) to the extent such facility is used in the transmission of
69 video programming directly to subscribers, unless the extent of such
70 use is solely to provide interactive on-demand services;

71 (4) An open video system that complies with 47 U.S.C. §573; or

72 (5) Any facilities of any electric utility used solely for operating
73 its electric utility system.

74 “Division.” The Division of Community Antenna Television,
75 established in the Department of Telecommunications and Energy or
76 any successor agency.

77 “Franchise.” An initial authorization, or renewal of an authoriza-
78 tion, issued by a franchising authority, regardless of whether the
79 authorization is designated as a franchise, permit, license, resolution,
80 contract, certificate, agreement, or otherwise, that authorizes
81 the construction and operation of a cable system in the public rights-
82 of-way.

83 “Franchise holder” or “holder.” A person who has received a
84 state-issued franchise, but has not transferred or terminated such
85 franchise authorization, in accordance with the provisions of this
86 chapter.

87 “Franchising authority.” The Division and municipalities which
88 are entitled to require franchises and impose fees in accordance
89 with 47 U.S.C. §§522(10) and 542, respectively.

90 “Gross revenues.” (1) All revenue actually received by the fran-
91 chise holder, as determined in accordance with generally accepted
92 accounting principles, which is derived from the operation of the
93 franchise holder’s cable system to provide cable service within the
94 jurisdictional boundaries of the municipality, including:

95 (a) all charges billed to subscribers for any and all cable services
96 provided by the franchise holder;

97 (b) compensation received by the franchise holder that is derived
98 from the operation of the holder’s cable system to provide cable
99 service with respect to commissions that are paid to the holder as

100 compensation for promotion or exhibition of any products or serv-
101 ices on the holder's cable system, subject to subsection (2)(d) of this
102 definition.

103 (c) a pro rata portion of all revenue derived by the franchise
104 holder or its affiliates pursuant to compensation arrangements for
105 advertising derived from the operation of the holder's cable system
106 to provide cable service within the jurisdictional boundaries of the
107 municipality, subject to subsection (2)(a) of this definition. The allo-
108 cation shall be based on the number of subscribers in the municipal-
109 ity divided by the total number of subscribers in relation to the
110 relevant regional or national compensation arrangement. Advertising
111 commissions paid to third parties shall not be netted against adver-
112 tising revenue included in gross revenue.

113 (2) For purposes of this section, "gross revenues" does not
114 include:

115 (a) amounts not actually received, even if billed, such as bad debt;
116 refunds, rebates or promotional discounts to subscribers or other
117 third parties;

118 (b) revenues received by any affiliate of a franchise holder or any
119 other person in exchange for supplying goods or services used by the
120 franchise holder to provide cable service;

121 (c) revenues derived from services classified as non-cable service
122 under federal law including without limitation revenue received
123 from telecommunications services and information services; and any
124 other revenues attributed by the franchise holder to non-cable serv-
125 ice in accordance with Federal Communications Commission or
126 Division rules, regulations, standards or orders;

127 (d) revenues paid by subscribers to home shopping programmers
128 directly from the sale of merchandise through any home shopping
129 channel offered as part of the cable service, but not excluding any
130 commissions that are paid to the franchise holder as compensa-
131 tion for promotion or exhibition of any products or services on the
132 holder's cable system, such as a home shopping or a similar channel;

133 (e) revenues from the sale of cable service for resale in which the
134 reseller is required to collect a fee similar to the franchise fee from
135 the reseller's customer;

136 (f) amounts billed to and collected from subscribers to recover
137 any tax, fee, or surcharge imposed by any governmental entity upon
138 the franchise holder or upon subscribers by a city, state, federal, or

139 any other governmental entity and required to be collected by the
140 holder and remitted to the taxing entity (including, but not limited to,
141 fees payable to the commonwealth or municipalities due under this
142 chapter, sales and use tax, gross receipts tax, excise tax, utility users
143 tax, public utilities service or assessment fee, communications tax,
144 and any other fee not imposed by this chapter);

145 (g) revenues from the sale of capital assets or surplus equipment
146 that is not used by the purchaser to receive cable service from the
147 seller of such assets or surplus equipment;

148 (h) revenues from directory or Internet advertising revenue
149 including, but not limited to, yellow pages, white pages, banner
150 advertisement, and electronic publishing;

151 (i) revenues received as reimbursement by programmers of
152 marketing costs incurred by the franchise holder for the introduction
153 of new programming; and

154 (j) security deposits received from subscribers, excluding security
155 deposits applied to the outstanding balance of a subscriber's account
156 and thereby taken into revenue.

157 "Incumbent cable operator." The cable operator serving the
158 largest number of cable subscribers in a particular municipal fran-
159 chise area on the effective date of this chapter.

160 "Municipality." A city or town within the Commonwealth.

161 "Person." An individual, partnership, association, joint stock
162 company, trust, corporation, government entity, limited liability
163 company or any other entity.

164 "Public right-of-way." The area on, below or above a public road-
165 way, highway, street, public sidewalk, alley, waterway, or utility
166 easement in which a municipality has an interest.

167 "Video programming." Programming provided by, or generally
168 considered comparable to, programming provided by a television
169 broadcast station, as set forth in 47 U.S.C. Section 522(20).

170 2. Authorization to provide cable service.

171 A. General rule. Notwithstanding any other law to the contrary
172 and subject to subsection B of this section, a person seeking to
173 provide cable service in the Commonwealth of Massachusetts after
174 the effective date of this chapter shall file an application for a state-
175 issued franchise with the Division as required by this section.

176 B. Grandfather provision. A person, including an incumbent cable
177 operator, providing cable service under a franchise agreement with a
178 franchising authority which existed prior to the effective date of this
179 chapter is not subject to this section until the franchise agreement
180 expires at the end of its original or any mutually agreeable renewal
181 term, or unless and until the franchising authority and entity provid-
182 ing cable service mutually agree to terminate the existing franchise
183 agreement.

184 C. Restrictions. Nothing in this section shall restrict a cable opera-
185 tor from applying to the Division for a state-issued franchise to
186 provision cable services in territories of the state for which it
187 does not have an existing franchise agreement with a franchising
188 authority. For purposes of this section, a cable operator will be
189 deemed to have a franchise to provide cable service in the jurisdic-
190 tion of a specific franchising authority if any affiliate, predecessor or
191 successor entity of the cable operator maintains a franchise granted
192 by that franchising authority. The terms “affiliate, predecessor or
193 successor entity” in this section shall include but not be limited to
194 any entity receiving, obtaining or operating under a franchise from
195 a franchising entity for cable service through the grant of a fran-
196 chise, merger, sale, assignment, restructuring, or any other type of
197 transaction.

198 3. Division responsibilities.

199 A. Franchising authority. The Division shall have the sole fran-
200 chising authority for the provisioning of cable service under this
201 chapter. Neither the Division nor any municipality in the state may
202 require the franchise holder to obtain any separate or additional fran-
203 chise or otherwise impose any fee or other requirement, including
204 but not limited to the regulation of cable service rates, on any fran-
205 chise holder as a condition of providing cable service, except as
206 provided in this chapter. The Division may delegate its authority to
207 issue a state-issued franchise to its staff or a member thereof.

208 B. General rule. The Division shall assign existing permanent
209 staff of such legal, technical and other employees of the Division as
210 may be required for the proper conduct of its cable franchising
211 responsibilities under this chapter. The powers and duties of the
212 Division with respect to state-issued franchise shall not exceed those
213 prescribed in subsection C of this section.

214 C. Powers and duties. The Division's administrative powers and
215 duties shall be limited to the:

216 (1) Review of the initial submission and any updates for
217 completeness;

218 (2) Determination and notice of incomplete applications;

219 (3) Approval of applications and amended applications and
220 issuance of state-issued franchises, or denial of such applications,
221 within the periods designated under the provisions of this chapter;

222 (4) Issuance to applicants whose applications are approved of
223 state-issued franchises to provide cable service in the service area
224 footprint described in the application; to construct, upgrade, operate
225 or maintain a network capable of providing such service, and to use
226 and occupy the public rights-of-way in the delivery of that service;

227 4. Application for state-issued franchise.

228 A. General rule. Any person desiring to provide cable service in
229 the Commonwealth after the effective date of this chapter shall file
230 an application for a franchise with the Division as required by this
231 section. The applicant for a state-issued franchise shall provide
232 notice of the filing and of any subsequent amendments to all municipi-
233 palities in which it will provide cable service.

234 B. Contents of application. Applications for a state-issued fran-
235 chise shall contain and be limited to:

236 (1) A statement that the applicant has filed or will timely file with
237 the Federal Communications Commission all forms required by that
238 agency in advance of offering cable service in this state;

239 (2) A statement that the applicant agrees to comply with all other
240 applicable federal, state statutes and regulations and all generally
241 applicable municipal ordinances and regulations, including without
242 limitation municipal ordinances and regulations regarding the time,
243 place and manner of using and occupying public rights-of-way
244 adopted in accordance with state and federal law;

245 (3) A general identification of the service area for which authority
246 is sought, such as a statement that service will be provided within
247 the whole or portion one or more specified municipalities. The serv-
248 ice area identification shall be updated by the applicant prior to the
249 expansion of cable service to a previously undesignated service area
250 and, upon such expansion, written notice shall be given to the Divi-
251 sion of the new service area to be served by the applicant. The state-

252 issued franchise area and any service area within the franchise area
253 may extend beyond the area or areas where the applicant has pre-
254 existing authority to occupy the public rights-of-way;

255 (4) The location of the applicant's principal place of business, the
256 names of the applicant's principal executive officers, and the name,
257 address and telephone number of an officer, general partner or other
258 employee of the applicant who will be responsible for ongoing
259 communications with the Division;

260 (5) The name and location of the principal place of business of the
261 applicant's parent company, if any; and

262 (6) The signature of an officer or general partner of the applicant
263 verifying the information set forth in the application.

264 C. Notification. Within 10 business days after it receives the
265 application, the Division shall (1) determine whether an application
266 submitted pursuant to subsection B of this section is incomplete,
267 and (2) if so, the Division shall notify the applicant that the applica-
268 tion is incomplete and identify the information that the Division
269 must receive from the applicant to make the application complete.

270 D. Application decision. Within 15 business days after it receives
271 the completed application, the Division shall approve the application
272 and issue a franchise to the applicant, or deny the application. The
273 Division may deny the application only if the applicant has failed to
274 state in the application the information and representations required
275 by subsection B of this section. If the Division denies the applica-
276 tion, it must specify with particularity the reason or reasons for
277 the denial, and the applicant may amend its application to cure any
278 deficiency. The Division shall decide such amended application
279 within 5 business days of its submission to the Division by the appli-
280 cant. An applicant may challenge a denial of its application or
281 amended application in any court of competent jurisdiction. If the
282 Division fails to approve or deny an application or amended within
283 the applicable time period set forth in this subsection, then the appli-
284 cation or amended application shall be deemed approved by the
285 Division and the franchise shall be deemed to have been issued to
286 the applicant.

287 E. Contents of state-issued franchise. A franchise authorization
288 shall contain:

289 (1) A grant of a franchise to provide cable service in the service
290 area footprint described in the application; to construct, upgrade,

291 operate or maintain a network capable of providing such service,
292 except where this grant is not required under subsection F of this
293 section; and to use and occupy the public rights-of-way in the deliv-
294 ery of that service; and

295 (2) A statement that the franchise grant in subsection (1) is
296 subject to lawful operation of the cable service by the applicant or its
297 successor in interest.

298 F. Pre-existing authority. An applicant having pre-existing author-
299 ity to utilize the public rights-of-way is required to obtain a state-
300 issued franchise prior to the actual provision of cable service on a
301 commercial basis directly to subscribers. However, such an applicant
302 is not required to obtain a state-issued franchise or any municipality
303 authorization, except for being subject to generally applicable
304 municipality right-of-way requirements governing street openings,
305 traffic control and the like, in order to construct, upgrade, operate or
306 maintain a network that is capable of providing cable service.

307 G. Transferability. The franchise authorization issued by the Divi-
308 sion is fully transferable to any successor in interest to the applicant
309 to which it is initially granted without the approval or consent of the
310 Division or any municipality. The applicant or its successor in inter-
311 est shall file a written notice of such transfer with the Division and
312 the relevant municipality or entities within 14 business days after the
313 completion of the transfer. This notice shall include a certification
314 that the successor in interest agrees to be bound by the terms of the
315 franchise authorization and is legally, technically and financially
316 qualified to operate the cable system.

317 H. Termination. The franchise authorization issued by the Divi-
318 sion may be terminated by the cable operator by submitting written
319 notice of such termination to the Division and any affected munici-
320 pality.

321 I. Fees. The Division may charge a fee for filing an application
322 under this section. Any fee charged by the Division under this
323 subsection shall not exceed the actual costs to process and review
324 the application.

325 5. Access to public rights-of-way.

326 A. General rule. Municipalities shall allow the franchise holder
327 under this chapter to install, construct, upgrade, operate and maintain
328 a cable system within public rights-of-way within the jurisdiction of

329 the municipality under the same terms and conditions as applicable
330 to public utility corporations under applicable state and federal law.

331 B. Nondiscrimination. No municipality shall discriminate against
332 the franchise holder regarding the authorization or placement of a
333 communications network in public rights-of-way, access to a build-
334 ing or a utility pole attachment term. All municipality right-of-way
335 requirements applicable to cable operators must be competitively
336 neutral, reasonable and nondiscriminatory.

337 C. Construction permits and licenses. In the exercise of its lawful
338 regulatory authority, municipalities shall promptly process all valid
339 and administratively complete applications of the franchise holder
340 for a permit or license, to excavate, set poles, locate lines, construct
341 facilities, make repairs, affect traffic flow, or other similar approvals.
342 The municipality shall make every reasonable effort not to delay
343 or unduly burden the holder in the timely conduct of the holder's
344 business.

345 D. Expedited response or repair. In the event of fire, flooding,
346 accident or other exigent circumstances necessitating immediate
347 response work or repair by the franchise holder, the holder may
348 begin the response work or repair or take any action required under
349 the circumstances without prior approval from the affected munic-
350 ipality, provided, however, that the holder notifies the municipality as
351 promptly as reasonably possible after beginning the work and subse-
352 quently obtains any approval required by a municipal ordinance
353 applicable to expedited response or repair work.

354 E. Indemnity in connection with public rights-of-way. The fran-
355 chise holder shall indemnify and hold a municipality and its officers
356 and employees harmless against any and all claims, lawsuits, judg-
357 ments, costs, liens, losses, expenses, fees (including reasonable
358 attorney's fees and costs of defense), proceedings, actions, demands,
359 causes of action, liability, and suits of any kind and nature, including
360 personal or bodily injury (including death), property damage, or
361 other harm for which recovery of damages is sought, that is found by
362 a court of competent jurisdiction to be caused solely by the negligent
363 act, error, or omission of the holder or any agent, officer, director,
364 representative, employee, affiliate, or subcontractor of the holder or
365 their respective officers, agents, employees, directors, or representa-
366 tives, while installing, repairing, or maintaining facilities in a munic-
367 ipality public right-of-way. The indemnity provided by this

368 subsection does not apply to any liability resulting from the negli-
369 gence of the municipality or its officers, employees, contractors, or
370 subcontractors. If the franchise holder and the municipality are
371 found jointly liable by a court of competent jurisdiction, liability
372 shall be apportioned comparatively in accordance with the laws of
373 this state without, however, waiving any governmental immunity
374 available to the municipality under state law and without waiving
375 any defenses of the parties under state law. This subsection is solely
376 for the benefit of the municipality and the franchise holder and does
377 not create or grant any rights, contractual or otherwise, for or to any
378 other person or entity.

379 F. Written notice. The franchise holder and a municipality shall
380 promptly advise the other in writing of any known claim or demand
381 against the holder or the municipality related to or arising out of the
382 holder's activities in a public right-of-way.

383 G. The Division shall have no jurisdiction to review regulations
384 and ordinances adopted by a municipality to manage public rights-
385 of-way.

386 6. Municipal regulation of franchise holders.

387 A. Municipal powers regarding franchise holders. A municipality
388 may:

389 (1) Exercise its nondiscriminatory police power with respect to its
390 public rights-of-way and a franchise holder's use thereof;

391 (2) Receive and address cable service quality complaints from
392 a franchise holder's customers within the municipality;

393 (3) Require a franchise holder who is providing cable service
394 within the municipality to register with the municipality, maintain a
395 point of contact, and provide notice of any franchise authorization
396 transfer to the municipality within 14 business days after the
397 completion of the transfer;

398 (4) Establish reasonable guidelines regarding the use of public,
399 educational, and governmental access channels within the munic-
400 ipality.

401 B. Limitation of municipal authority over franchise holders. No
402 municipality shall impose on activities of the franchise holder any
403 requirement:

404 (1) That particular business offices of the holder be located within
405 the territory of the municipality;

406 (2) That reports or other documents which are not required by
407 federal or state law and which are not related to the holder's use of
408 the public rights-of-way be filed by the holder with the municipality;

409 (3) That the holder provide information to the municipality
410 concerning the capacity or other operational characteristics of the
411 holder's cable system or communications network facilities;

412 (4) That the holder's business records be subject to inspection by
413 the municipality, except to extent permitted under section 7 of this
414 chapter;

415 (5) That transfers of ownership or control of the holder's business
416 be approved by the municipality, except that a municipality may
417 require that the holder maintain a current point of contact with
418 the municipality and that the holder or its successor-in-interest to
419 provide notice of a transfer to the municipality within 14 business
420 days after the completion of the transfer;

421 (6) That the holder which is self-insured under the applicable
422 provisions of state law obtain insurance or bonding for any activities
423 within the territory of the municipality, except that a self-insured
424 holder shall provide substantially the same claims processing as an
425 insured provider. A bond shall not be required from a holder for any
426 work consisting of aerial construction except that a reasonable bond
427 may be required of a holder that cannot demonstrate a record of at
428 least four years' performance of work in any municipality's public
429 rights-of-way free of currently unsatisfied claims by the municipality
430 for damage to the public rights-of-way;

431 (7) That the holder provide the municipality with an indemnifica-
432 tion in connection with public rights-of-way that is broader than the
433 indemnification required in section 5 of this chapter; or

434 (8) That the holder build out its cable system to areas of the
435 municipality not included in the holder's service area footprint
436 designated pursuant to Section 4(B) of this chapter or comply with
437 any other mandatory build-out provisions.

438 7. Payment and remittance of franchise fee.

439 A. General rule. The franchise holder who offers cable service
440 within the jurisdiction of a municipality shall calculate and remit to
441 the commonwealth and municipality at the end of each calendar year
442 quarter a franchise fee, as provided in this section. The obligation to
443 calculate and remit the franchise fee to the commonwealth and a

444 municipality begins immediately upon provision of cable service
445 within that municipality's jurisdiction, but the first remittance shall
446 not be due until the end of the first calendar year quarter that is later
447 than 180 days after the provision of cable service began.

448 B. Calculation of franchise fee. The franchise holder shall pay
449 a franchise fee not to exceed in total 5% percent of the holder's
450 gross revenues, as defined in Section 1 of this chapter, as follows:
451 (i) eighty cents per subscriber served payable to the commonwealth;
452 (ii) fifty cents per subscriber served payable to a municipality in
453 which the holder provides cable service; and (iii) a percentage of the
454 franchise holder's gross revenues payable to a municipality in which
455 the holder provides cable service which the municipality establishes
456 by ordinance.

457 C. Documentation. No fee under this section will become due
458 until the municipality certifies and provides documentation to the
459 franchise holder supporting the percentage paid by any incumbent
460 cable operator serving the area within the municipality's jurisdiction.

461 D. Restrictions. No municipality or any other political subdivision
462 of this state may assess any additional fees or charges or require
463 other remuneration of any kind from the franchise holder other than
464 as set forth in this section.

465 E. Application to bundled services. For purposes of this section,
466 in the case of a cable service that may be bundled or integrated func-
467 tionally with other services, capabilities or applications, the fran-
468 chise fee shall be applied only to the gross revenues, as defined in
469 this chapter, attributable to cable service, as reflected on the books
470 and records of the holder in accordance with generally accepted
471 accounting principles and Federal Communications Commission
472 rules, regulations, standards or orders, as applicable.

473 F. Remittance and review of franchise fee. The franchise fee shall
474 be remitted to the commonwealth and applicable municipality quar-
475 terly, within 45 days after the end of the quarter for the preceding
476 calendar quarter. Each payment shall be accompanied by a summary
477 explaining the basis for the calculation of the franchise fee. Not
478 more than once annually, the commonwealth and a municipality may
479 examine the franchise holder's business records to the extent reason-
480 ably necessary to ensure compensation in accordance with this
481 section. Each party shall bear the party's own costs of the examina-
482 tion. Any claims by the commonwealth or a municipality that

483 compensation is not in accordance with this section, and any claims
484 for refunds or other corrections to the remittance of the franchise
485 holder, must be made within three years and 45 days of the end of
486 the quarter for which compensation is remitted, or three years from
487 the date of remittance, whichever is later. Either the commonwealth,
488 a municipality or the franchise holder may, in the event of a dispute
489 concerning compensation under this section, bring an action in a
490 court of competent jurisdiction.

491 G. The franchise holder may identify the municipality and bill and
492 collect the amount of the franchise fee and any PEG access support
493 under section 8 as separate prorated line items on the regular bill of
494 each subscriber.

495 8. Public, educational and government access channels.

496 A. General rule. The franchise holder shall provide the municipi-
497 tality with capacity in its cable system to allow public, educational,
498 and governmental (PEG) access channels for noncommercial
499 programming.

500 B. Provisioning of access channels. The franchise holder shall
501 designate a sufficient amount of capacity on its cable system to
502 allow the provision of a comparable number of PEG access channels
503 or hours of programming that the incumbent cable operator has acti-
504 vated and provided within the municipality under the terms of its
505 franchise agreement as of the effective date of this chapter. If a
506 municipality did not have PEG access channels as of that date, the
507 franchise holder shall furnish to the municipality upon request up to
508 three PEG access channels for a municipality with a population of at
509 least 50,000 and up to two PEG access channels for a municipality
510 with a population of less than 50,000. For the purposes of this
511 section, a PEG access channel is deemed to be and remain activated
512 if it is being utilized for PEG programming within the municipality
513 for at least 8 hours per day and if such programming is not broad-
514 cast more than once in every 8 hours. The franchise holder shall
515 have 12 months from the date the municipality requests such PEG
516 access channels to designate the PEG access channel capacity;
517 provided, however, that the 12-month period shall be tolled by any
518 period during which the designation or provision of PEG access
519 channel capacity is technically infeasible, including any failure or
520 delay of the incumbent cable operator to made adequate interconnec-
521 tion available, as required by this section.

522 C. PEG support. The franchise holder shall provide funding to a
523 municipality in which it provides cable service to be used to support
524 the operations of PEG access programming. If PEG access support is
525 provided to a municipality by an incumbent cable provider under a
526 franchise agreement, the state-issued franchise holder shall pay,
527 while the incumbent agreement is in effect, the same amount on a
528 per subscriber basis as the incumbent cable provider pays on a per-
529 subscriber basis to the municipality for on-going PEG support.
530 When the incumbent cable provider's franchise agreement expires or
531 if there is no incumbent cable provider in a municipality, PEG
532 support by a franchise holder shall be set by ordinance but shall not
533 exceed one (1) percent of a franchise holder's gross revenues for
534 cable service provided within the municipality.

535 D. Remittance of PEG support. The PEG support shall be remit-
536 ted to the applicable municipality quarterly, within 45 days after the
537 end of the quarter for the preceding calendar quarter. Each payment
538 shall be accompanied by a summary explaining the basis for the
539 calculation of the franchise fee. Not more than once annually, a
540 municipality may examine the franchise holder's business records to
541 the extent reasonably necessary to ensure compensation in accor-
542 dance with this section. Each party shall bear the party's own costs
543 of the examination. Any claims by a municipality that compensation
544 is not in accordance with this section, and any claims for refunds or
545 other corrections to the remittance of the franchise holder, must be
546 made within three years and 45 days of the end of the quarter for
547 which compensation is remitted, or three years from the date of
548 remittance, whichever is later. Either a municipality or the franchise
549 holder may, in the event of a dispute concerning compensation under
550 this section, bring an action in a court of competent jurisdiction.

551 C. Termination. The franchise holder may cease providing any
552 PEG access channel provided pursuant to this section that is not
553 utilized by the municipality for at least 8 hours per day, and except
554 as provided herein, the access channel may thereafter be
555 programmed at the franchise holder's discretion. If the municipality
556 subsequently certifies to the holder a schedule for at least 8 hours of
557 daily non-repeat PEG access channel programming per channel, the
558 holder shall restore the PEG access channel(s) for the use of
559 the municipality for as long as the municipality uses the channel(s)
560 for at least 8 hours a day.

561 D. Channel responsibility. The content and operation of any PEG
562 access channel provided pursuant to this section shall be the respon-
563 sibility of the municipality, receiving the benefit of such channel,
564 and the franchise holder bears only the responsibility for the trans-
565 mission of such channel, subject to technological constraints. The
566 franchise holder shall be responsible for providing the connectivity
567 to each PEG access channel programming distribution location and
568 for doing so without charge for up to the first 200 feet of the holder's
569 connecting facilities.

570 E. Transmission of programming. The municipality must ensure
571 that all transmissions, content, or programming to be transmitted
572 over a PEG access channel or facility by a franchise holder are
573 provided or submitted to the franchise holder in a manner or form
574 that is capable of being accepted and transmitted by the franchise
575 holder, without requirement for additional alteration or change in the
576 content by the franchise holder, over the franchise holder's cable
577 system. The municipality's provision of PEG content to the holder
578 shall constitute authorization for the holder to carry such content
579 including, at the holder's option, beyond the jurisdictional bound-
580 aries of the municipality.

581 F. Municipal Service. A franchise holder shall provide and main-
582 tain, without charge, one service outlet activated for basic service to
583 any and all fire stations, public schools, police stations, public
584 libraries, and other such buildings used for municipal purposes
585 located in its service area.

586 G. Emergency Alert System: A franchise holder shall comply with
587 the Emergency Alert System ("EAS") requirements of the FCC in
588 order that emergency messages may be distributed over the Cable
589 System.

590 H. Interconnection. Each franchise holder and incumbent cable
591 operator shall use reasonable efforts to interconnect their cable
592 systems for the purpose of providing PEG access channel program-
593 ming. Interconnection may be accomplished by direct cable,
594 microwave link, satellite, or other reasonable method of connection.
595 Franchise holders and incumbent cable operators shall negotiate in
596 good faith and incumbent cable operators may not withhold inter-
597 connection of PEG channels. In the event a franchise holder and an
598 incumbent cable operator cannot reach a mutually acceptable inter-
599 connection agreement, then the duty of the holder shall be
600 discharged if the holder makes interconnection available to the chan-

601 nel originator at a point on the holder's network, as determined by
602 the holder, which is within the relevant municipality.

603 I. Identifying brands. A franchise holder shall not be required to
604 interconnect for, or otherwise to transmit, PEG content that is
605 branded with the logo, name or other identifying marks of another
606 cable operator. The municipality may require a cable operator to
607 remove its logo, name, or other identifying marks from PEG content
608 that is to be made available through interconnection to another
609 provider of PEG access channel capacity.

610 J. Enforcement. A court of competent jurisdiction shall have juris-
611 diction to enforce any requirement under this section or resolve any
612 dispute regarding the requirements set forth in this section, and no
613 cable operator may be barred from the provision of cable service or
614 be required to terminate cable service as a result of such dispute or
615 enforcement action.

616 9. Discrimination in the provisioning of service prohibited.

617 A. General rule. A cable operator that has been granted a state-
618 issued franchise under this chapter shall not deny access to cable
619 service to any group of potential residential subscribers because of
620 the income of the residents in the local area in which such group
621 resides.

622 B. Determination of violations.—For purposes of determining
623 whether a franchise holder has violated subsection (A), cost, low
624 household density, distance and technological, network architecture,
625 or commercial impracticability limitations must be taken into
626 account and the franchise holder shall have a reasonable time to
627 deploy its service. Use of alternative technologies that provide
628 comparable content, service and functionality shall not be consid-
629 ered a violation of this section. The inability to serve a potential resi-
630 dential subscriber because a franchise holder is prohibited from
631 placing its own facilities in a building or property shall not be found
632 to be a violation of this section. This section may not be construed as
633 authorizing any build-out requirements on a franchise holder.

634 C. Customer service requirements. Notwithstanding any other
635 provision of law, the franchise holder shall comply with customer
636 service requirements set forth at 47 C.F.R. §76.309(c) until there are
637 two or more providers, including the holder but excluding direct-to-
638 home satellite service, offering cable service within the jurisdiction
639 of the relevant municipality where the holder has been authorized
640 to serve.

641 10. Enforcement.

642 The exclusive remedy for enforcing the provisions of this chapter
643 shall be an action in a court of competent jurisdiction brought by
644 either the municipality or the Massachusetts Attorney General on
645 behalf of the Division. At least 60 days before bringing such an
646 action, the municipality or Attorney General shall serve the franchise
647 holder with a notice setting out the alleged violation and stating that
648 an action may be brought unless the holder corrects the alleged
649 violation or enters into a binding agreement to correct the violation
650 within the 60-day notice period. The notice shall contain a suffi-
651 ciently detailed description of the alleged violation to enable the
652 franchise holder make a specific response.

653 11. Applicability of other laws.

654 The provisions of this chapter are intended to be consistent with
655 the Federal Cable Act, 47 U.S.C. §521, et. seq., and nothing in this
656 chapter shall be interpreted to prevent a voice provider, cable opera-
657 tor or municipality from seeking clarification of its rights and oblig-
658 ations under federal law. In the event that any cable operator obtains
659 relief through judicial, administrative, or executive action from any
660 obligation imposed under this chapter, or from any obligation in a
661 franchise agreement that gives rise to an obligation of another cable
662 operator under this chapter, all other cable operators shall be deemed
663 to be relieved of their obligations under this chapter within the same
664 geographic area and to the same extent.

665 12. Severability.

666 If any provision of this chapter or its application to any person or
667 circumstance is held invalid, this invalidity does not affect other
668 provisions or applications of this chapter that can be given effect
669 without the invalid provision or application, and to this end the
670 provisions of this chapter are declared to be severable.

671 13. Effective Date.

672 This act shall take effect immediately upon passage.