

**HOUSE . . . . . No. 3765**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Michael J. Rodrigues**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act promoting consumer choice and competition for cable service.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Michael J. Rodrigues	8th Bristol
Geraldo Alicea	6th Worcester

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## 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 SECTION 1. Findings.

2 Whereas Massachusetts' consumers benefit from expanded choice and competition for  
3 cable television services, and

4 Whereas, increased investment and the potential for competition in the cable service  
5 market through the provisioning of new communications services and deployment of advanced  
6 communications infrastructure, including fiber optic technologies, further enhances economic  
7 opportunities, smart growth, the delivery of health care services, improved public safety,  
8 education and human services and the overall health and well being of the residents of the  
9 Commonwealth, and

10 Whereas, modifying existing cable service franchising laws through the enactment of  
11 new standards and procedures that provide consumers with expedited access to a competitive  
12 facilities-based cable market is warranted in this state,

13 The General Court finds that a local franchising process that speeds innovation,  
14 technology deployment, and competition while sustaining local programming via public,  
15 education and government channels through a predictable set of consumer-supported fees is in  
16 the public interest.

17 SECTION 2. Chapter 166A is hereby amended in section 1, as appearing in the 2006 Official  
18 Edition, by inserting the following definition:

19 "Incumbent cable operator." The cable operator serving the largest number of cable subscribers in a  
20 particular municipal franchise area on the effective date of this chapter.

21 SECTION 3. Section 5 of said chapter 166A, as so appearing, is hereby amended by inserting  
22 after by inserting after the words "shall agree to the following", in the first sentence, the  
23 following words:- "unless otherwise authorized by an agreement with an issuing authority."

24 SECTION 4. Said chapter 166A is hereby further amended by striking out section 6, as so  
25 appearing, and inserting in place thereof the following section:-

26 Section 6. Issuance of License; Hearing; Notice.

27 (a) Within ten (10) business days of receipt of an application, the issuing authority and applicant shall  
28 commence negotiations on the terms and conditions of a license.

29 (b) Within ninety (90) days of receipt of an application, the issuing authority shall hold a public  
30 hearing thereon, first causing notice of the time and place of such hearing and of the subject matter  
31 sufficient for identification, to be published in a newspaper of general circulation in the city or town  
32 not less than fourteen days before the day of such hearing, or if there is no such newspaper in such  
33 city or town then by posting such notice in a conspicuous place in the city or town hall for a period of  
34 not less than fourteen days before the day of such hearing.

35 (c) The purpose of the hearing shall be to assess the applicant's financial, technical and other  
36 qualifications to operate a CATV system in the municipality based upon the contents of the  
37 application and the negotiated terms and conditions of the license. Within five (5) business days of  
38 the public hearing held pursuant to this section, the issuing authority shall approve or deny the  
39 application, provided that the issuing authority may not unreasonably refuse to approve a competitive  
40 cable license application. For purposes of this section, it shall be deemed unreasonable for an issuing  
41 authority to require the applicant to provide fees in excess of those set forth in section nine of this  
42 chapter. In the event that the issuing authority approves the application, then the parties shall execute  
43 a final license within five (5) business days of the public hearing, and the issuing authority shall  
44 deliver a copy of the fully-executed final license to the division. In the event that the issuing  
45 authority denies the application, then it shall issue a written public statement within five (5) business  
46 days of the public hearing containing the reasons for its rejection, and the issuing authority shall  
47 promptly deliver a copy of said public statement to the applicant and to the division.

48 SECTION 5. Chapter 166A is hereby amended by striking out section 9, as so appearing, and  
49 inserting in place thereof the following section:-

50 Section 9. License Fees; PEG Support Fees.

51 (a) No application for a license to operate a CATV system or for renewal, transfer or assignment of  
52 such a license shall be considered by an issuing authority unless it is accompanied by an application  
53 fee of one hundred dollars payable to the city or town. A licensee, serving more than two hundred  
54 and fifty subscribers, shall on or before March fifteenth of each year, pay to the commonwealth a  
55 license fee equal to eighty cents per subscriber served and to the issuing authority a license fee  
56 equal to fifty cents per subscriber served. In determining a license fee, the number of subscribers  
57 served shall be measured as of December thirty-first of the preceding calendar year.

58 (b) The issuing authority may require each CATV operator issued a license to provide funding to  
59 support the ongoing operations of public, educational and governmental access programming. Such

60 fee, together with the license fee set forth in subsection (a), shall not exceed five percent (5%) of the  
61 CATV operator's annual gross revenue.

62 (c) Unless otherwise authorized by an agreement with the issuing authority, after the effective date of  
63 this chapter and until the expiration of the incumbent CATV operator's existing license, if the  
64 incumbent CATV operator's license has obligations to remit to the issuing authority any lump sum  
65 payments for the capital costs of public, educational, and government access channel facilities or  
66 institutional networks, each CATV operator issued a license by the issuing authority may be  
67 required to provide payments to the issuing authority to support the capital costs of public,  
68 educational, and government access channel facilities or institutional networks in an amount up to  
69 one percent (1%) of each operator's annual gross revenue, provided that in no event shall the total of  
70 such payments exceed the capital support funding required to be provided in the incumbent CATV  
71 operator's license, pro rated on a monthly per subscriber basis calculated based on the incumbent  
72 CATV operator's capital support obligation in the existing license and number of subscribers in the  
73 municipality at the time the competitive provider's license application is filed with the issuing  
74 authority.

75 (d) After expiration of the incumbent CATV operator's license in effect as of the effective date of this  
76 chapter, all CATV operators in a municipality shall provide annual payments to the issuing  
77 authority to support the capital costs of public, educational, and government access channel  
78 facilities or institutional networks in an amount equal to one percent (1%) of each operator's annual  
79 gross revenues, or such other lesser amount that may be authorized by an agreement with the  
80 issuing authority. Each such annual payment shall be remitted to the issuing authority on or before  
81 March 15<sup>th</sup> of each year.

82 (e) The CATV operator's obligation to transmit public, educational and governmental access channel  
83 signals shall be subject to the provision by the issuing authority, without charge to the CATV  
84 operator of: (1) access to the content origination facility; (2) access to any required equipment  
85 within the content origination facility and suitable required space, environmental conditions,  
86 electrical power supply, access, and pathways within the content origination facility; (3) video and  
87 audio signal feeds in a mutually agreed upon format suitable for access channel programming; and  
88 (4) any third-party consent that may be necessary to transmit such access channel signals (including,  
89 without limitation, any consent that may be required with respect to third-party facilities, including  
90 the facilities of the incumbent cable provider, used to originate at or transmit access channel content  
91 to the content origination facility) .

92 SECTION 6. Said chapter 166A, as so appearing, is hereby further amended by striking out the  
93 first paragraph of Section 14, and replacing it with the following new paragraph:

94 Any applicant for a license or renewal of a license who is aggrieved by a denial of its application by the  
95 issuing authority or by its failure to act within the period of sixty days or otherwise act with the time  
96 periods set forth in Section 6 of this chapter or any licensee who is aggrieved by the action of an issuing  
97 authority in modifying, suspending, cancelling, revoking, declaring a license forfeited, denying consent to  
98 the transfer or assignment of a license or control thereof, or by the issuing authority's failure to act within  
99 the period of sixty days may appeal therefrom to the division within thirty days following notice of such  
100 action or within thirty days following the expiration of such sixty day period of inaction or such time  
101 period set forth in Section 6 of this chapter, by a petition in writing, setting forth all material facts in the  
102 case.

103 SECTION 7. Said chapter 166A is hereby further amended by striking out the first line of  
104 Section 16, as so appearing, and inserting in its place the following sentence:

105 The division shall after hearing issue or amend such standards and regulations as are necessary  
106 and appropriate to carry out the purpose of this chapter for which purpose it may employ such  
107 expert assistants as it deems necessary.

108 SECTION 8. This act shall take effect immediately upon passage.