

Regular Session, 2008

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

BY SENATOR DUPLESSIS

CABLE TELEVISION. Provides for the Consumer Choice Television Act. (gov sig)

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AN ACT

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

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 10-A of Title 45 of the Louisiana Revised Statutes of 1950,

1 comprised of R.S. 45:1361 through 1377, is hereby enacted to read as follows:

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

3 **§1361. Short title**

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

6 **§1362. Legislative findings**

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

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

28 **C. The Legislature of Louisiana further finds that it is in the best**
29 **interests of consumers of video programming services that access to the public**

1 rights-of-way for the provision of cable and video services to be provided on a
2 non-exclusive, nondiscriminatory basis, that such access not be unreasonably
3 denied, and that the fees and charges applied to video programming providers
4 be equitable regardless of the technology used.

5 D. The Legislature of Louisiana intends that this Chapter provide
6 uniform regulation of cable and video service franchising. Therefore, the
7 Legislature of Louisiana intends that the Chapter occupy the entire field of
8 cable and video service franchising regulation in the state of Louisiana and,
9 except as provided herein, shall preempt any ordinance, resolution, or similar
10 matter adopted by a local governmental subdivision that purports to address
11 cable or video service franchising or regulation. This Chapter is enacted
12 pursuant to the police powers ultimately reserved to the state by Article VI,
13 Section 9 of the Constitution of Louisiana.

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

23 §1363. Definitions

24 When used in this Chapter:

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

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

6 **(3) "Cable system" means a facility consisting of a set of closed**
7 **transmission paths and associated signal generation, reception, and control**
8 **equipment that is designed to provide cable service which includes video**
9 **programming and which is provided to multiple subscribers within a**
10 **community but does not include the following facilities or systems:**

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

13 **(b) A facility that serves subscribers without using any public right of**
14 **way.**

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

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

22 **(e) Any facilities of an electric utility used solely for operating its electric**
23 **system.**

24 **(4) "Certificate" means the certificate of franchise authority issued by**
25 **the secretary of state to a person or entity to provide cable service or video**
26 **service in this state.**

27 **(5) "Commercial mobile service provider" means an interconnected**
28 **radio communication service carried on between mobile stations or receivers**
29 **and land stations, and by mobile stations communicating among themselves,**

1 provided for profit and to the public or to a substantial portion of the public.

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

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

11 (8) "Gross revenues" means all revenues received from subscribers for
12 the provision of cable service or video service, including franchise fees and all
13 revenues received from non-subscribers for advertising disseminated through
14 cable service or video service and home shopping services. Gross revenues shall
15 not include all of the following items:

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

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

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

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

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

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

27 (g) Any revenues from services provided over the cable system or other
28 wireline facilities used to distribute video programming services that are not
29 classified as cable services or video services including without limitation revenue

1 received from telecommunications services, information services but not
2 excluding cable services or video services, Internet access services, and directory
3 or Internet advertising revenues, including but not limited to yellow pages,
4 white pages, banner advertisements, and electronic publishing advertising.
5 Where the sale of any non-cable service or non-video service is bundled with the
6 sale of one or more cable services or video services and sold for a single non
7 itemized price, the term "gross revenues" shall include only those revenues that
8 are attributable to cable services or video services based on the provider's books
9 and records.

10 (h) Any revenues from sales for resale with respect to which the
11 purchaser is required to pay a franchise fee, provided the purchaser certifies in
12 writing that it will resell the service and pay a franchise fee with respect thereto.

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

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

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

21 (10) "Local governmental subdivision" means any parish or
22 municipality.

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

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

1 **(13) "Video programming" means programming provided by, or**
2 **generally considered comparable to programming provided by, a television**
3 **broadcast station.**

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

11 **(15) "Video service provider" means any entity providing video service.**
12 **"Video service provider" shall not include a cable service provider or any**
13 **affiliate, successor, or assign of a cable service provider operating under a**
14 **franchise agreement with a local governmental subdivision in this state on the**
15 **effective date of this Chapter.**

16 **§1364. Certificate issued by the state; eligibility**

17 **A. Any person or entity seeking to provide cable service or video service**
18 **in this state after the effective date of this Chapter shall file an application for**
19 **a state franchise with the secretary of state as required by this Section and shall**
20 **provide a copy of such application simultaneously to each local governmental**
21 **subdivision listed in R.S. 45:1364(B)(2).**

22 **B. The secretary of state shall issue a certificate authorizing the applicant**
23 **to offer cable service or video service in this state within thirty days of receipt**
24 **of an application, which shall consist of an affidavit submitted by the applicant**
25 **and signed by an officer or general partner of the applicant affirming all of the**
26 **following items:**

27 **(1) The applicant agrees to comply with all applicable federal and state**
28 **laws and regulations.**

29 **(2) A list of municipalities and parishes to be served, in whole or part, by**

1 the applicant, which list shall be updated by the applicant prior to the provision
2 of cable service or video service to an area within a previously undesignated
3 local governmental subdivision.

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

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

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

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

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

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

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

28 D. The certificate issued by the secretary of state is fully transferable to
29 any successor in interest to the applicant to which it is initially granted. A

1 notice of transfer shall be promptly filed with the secretary of state within ten
2 days of the completion of the transfer.

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

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

11 G. The failure of the secretary of state to notify the applicant of the
12 incompleteness of the applicant's affidavit or issue a certificate before the tenth
13 day after receipt of a completed affidavit shall constitute issuance of the
14 certificate applied for without further action on behalf of the applicant.

15 H. A cable service provider is deemed to have or have had a franchise to
16 provide cable service in a specific local governmental subdivision on the
17 effective date of this Chapter if any predecessor of the cable service provider
18 had a cable franchise agreement granted by that specific local governmental
19 subdivision on that date.

20 §1365. State franchise; effect on existing local franchise agreement

21 A. Any incumbent service provider providing cable service or video
22 service in this state on the effective date of this Chapter under a franchise
23 previously granted by a local governmental subdivision is not subject to nor
24 may it avail itself of the state-issued certificate of franchise authority provisions
25 of this Chapter with respect to that local governmental subdivision until such
26 franchise expires or as provided in this Section. Notwithstanding any other
27 provision of law to the contrary, any such cable service provider or video
28 service provider may offer cable service or video service under a state-issued
29 certificate of franchise authority in accordance with the provisions of this

1 Chapter upon meeting one of the following circumstances:

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

4 (2) A mutually agreed upon date set by both the local governmental
5 subdivision issuing the existing franchise and the incumbent service provider
6 subject to the existing franchise to terminate the existing franchise provided in
7 writing to the secretary of state on a form required by the secretary of state.

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

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

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

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

23 (2) An incumbent service provider shall remain, under the terms and
24 conditions of the terminated franchise, subject to and obligated for any
25 indebtedness, liability, or obligation that is accrued, due, and owing to a local
26 governmental subdivision at the time the incumbent service provider terminates
27 the existing franchise previously issued by said local governmental subdivision.
28 Nothing in this Chapter shall be construed to release an incumbent service
29 provider exercising the option to terminate from any such accrued, due and

1 owing indebtedness, liability, or obligation.

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

7 §1366. Franchise fee

8 A. The holder of a certificate may be required, pursuant to an ordinance
9 adopted by the local governmental subdivision, to pay a franchise fee equal to
10 a specified percentage of such holder's gross revenues received from the
11 provision of cable service or video service to subscribers located within the
12 municipality or unincorporated areas of the parish and from advertising
13 disseminated through cable service or video service and home shopping services
14 as allocated under Subsection D of this Section. The fee shall not exceed five
15 percent of the holder's gross revenues. The fee shall be uniformly applied to all
16 holders of a state-issued certificate of franchise authority within the local
17 governmental subdivision. The local governmental subdivision shall provide a
18 copy of the enabling ordinance to the holder of a certificate as a condition to
19 receiving any franchise fee payments. As a condition precedent to a certificate
20 holder's obligation to pay a franchise fee established or changed pursuant to
21 this Section, the local governmental subdivision shall provide each certificate
22 holder with a copy of each rate change notification at least forty-five days in
23 advance of the effective date of the rate change.

24 B. The holder of a certificate shall pay to the local governmental
25 subdivision quarterly the aggregate amount of the franchise fees payable under
26 this Section. Each payment shall be made within thirty days after the end of the
27 preceding quarter for which payment is being made and shall be accompanied
28 by a statement showing the certificate holder's gross revenues attributable to
29 the local governmental subdivision for that quarter.

1 C. Any supporting statements shall be confidential and exempt from
2 disclosure as proprietary and trade secret information under any provision of
3 state law.

4 D. The amount of a cable service provider's or video service provider's
5 non-subscriber revenues from advertising disseminated through cable service
6 or video service and home shopping services that is allocable to a local
7 governmental subdivision is equal to the total amount of the cable service
8 provider's or video service provider's revenue received from such advertising
9 and home shopping services multiplied by the ratio of the number of
10 subscribers in such municipality or in the unincorporated area of such parish
11 on the preceding January first to the total number of subscribers receiving
12 cable service or video service from the cable service provider or video service
13 provider on that date.

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

17 F. No local governmental subdivision shall levy any tax, license, fee, or
18 other assessment on a cable service provider or video service provider for or in
19 connection with the use of public rights of way other than the franchise fee
20 authorized by this Section or fee authorized by R.S. 45:1370 or a cable franchise
21 fee or other fee imposed upon a cable service provider or video service provider
22 in an existing franchise prior to the effective date of this Chapter. No local
23 governmental subdivision shall levy any other tax, license, fee, or other
24 assessment on a cable service provider or video service provider or its
25 subscribers, which is not generally imposed and applicable to a majority of all
26 other businesses. Nothing in this Subsection shall restrict the right of any local
27 governmental subdivision to impose ad valorem taxes, service fees, sales taxes,
28 or other taxes and fees lawfully imposed on other businesses within such local
29 governmental subdivision.

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

5 **§1367. Franchise fee audits and dispute resolution**

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

10 **B. Any suit with respect to a dispute arising out of or relating to the**
11 **amount of the franchise fee due to a local governmental subdivision under R.S.**
12 **45:1366 shall be filed either by the local governmental subdivision seeking to**
13 **recover an additional amount alleged to be due, or by the certificate holder**
14 **seeking a refund of an alleged overpayment, in a state or federal court of**
15 **competent jurisdiction within three years following the end of the month to**
16 **which the disputed amount relates; however, this time period may be extended**
17 **by written agreement between the certificate holder and the local governmental**
18 **subdivision.**

19 **C. Prior to filing suit, the local governmental subdivision or certificate**
20 **holder shall give the other party written notice of any dispute not resolved in the**
21 **normal course of business. Representatives of both parties, with authority to**
22 **settle the dispute, shall meet within thirty calendar days after receipt of the**
23 **notice, and thereafter as often as reasonably deemed necessary, to exchange**
24 **relevant information and attempt to resolve the dispute. If the dispute is not**
25 **resolved within sixty calendar days after receipt of the notice, either the local**
26 **governmental subdivision or certificate holder may initiate nonbinding**
27 **mediation. Good faith participation in and completion of the negotiation and**
28 **mediation procedures set forth in this Subsection shall be a condition precedent**
29 **to proceeding with the suit beyond its filing to interrupt the prescriptive period**

1 set forth in this Section.

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

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

8 **§1368. Prohibition against build-out requirements**

9 No franchising authority, state agency, or political subdivision of the
10 state may impose any build-out requirements for construction of a cable system
11 or wireline facilities used to distribute video programming services or for cable
12 service or video service deployment on a holder of a certificate, subject to the
13 provisions of Title 48 of the Louisiana Revised Statutes of 1950.

14 **§1369. Public, educational, and governmental access programming streams or**
15 **channels**

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

22 B. The holder of a certificate shall designate a sufficient amount of
23 capability on its cable system or wireline facilities used to distribute video
24 programming services to allow for the provision of a comparable number of
25 PEG access programming streams or channels a local governmental subdivision
26 has activated under the franchise agreement of the incumbent service provider
27 with the most subscribers in such local governmental subdivision as of the
28 effective date of this Chapter. If a local governmental subdivision did not have
29 PEG access programming streams or channels as of the effective date of this

1 Chapter, the cable service provider or video service provider shall furnish, upon
2 written request, capability sufficient to support up to three PEG access
3 programming streams or channels for a local governmental subdivision with a
4 population of at least fifty thousand and up to two PEG access programming
5 streams or channels for a local governmental subdivision with a population of
6 less than fifty thousand. However, the holder of a certificate shall provide PEG
7 access programming streams or channels in the basic subscription service
8 offered by the provider.

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

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

1 programming stream or channel.

2 E. The local governmental subdivision shall ensure that all transmissions
3 of content and programming provided by or arranged by them to be
4 transmitted over a PEG access programming stream or channel by a holder of
5 a certificate are provided and submitted to the cable service provider or video
6 service provider in a manner or form that is capable of being accepted and
7 transmitted by the provider over its network without further alteration or
8 change in the content or transmission signal and which is compatible with the
9 technology or protocol utilized by the cable service provider or video service
10 provider to deliver its cable service or video service.

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

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

27 §1370. In-kind contributions; PEG access support

28 A. Local governmental subdivisions are prohibited from imposing in-
29 kind compensations and grants.

1 **B. Notwithstanding any other provision of law to the contrary, a local**
2 **governmental subdivision may require all holders of a state-issued certificate**
3 **of franchise authority, pursuant to an ordinance adopted by the local**
4 **governmental subdivision, to pay PEG access support in an amount up to one-**
5 **half percent of gross revenues. No payments shall be due pursuant to this**
6 **Section until the local governmental subdivision notifies the holder of a state-**
7 **issued certificate of franchise authority, in writing, of the amount owed. The fee**
8 **shall be uniformly applied to all holders of a state-issued certificate of franchise**
9 **authority within the local governmental subdivision.**

10 **C. Payments under this Section shall be made in the same manner as a**
11 **part of the certificate holder's payment of franchise fees pursuant to R.S.**
12 **45:1366, and all definitions, exemptions, and administrative provisions**
13 **applicable to franchise fees shall apply to such payments.**

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

18 **E. All payments made to a local governmental subdivision under this**
19 **Section are paid in accordance with 47 USC 531 and 541(a)(4)(B) and shall be**
20 **used by the local governmental subdivision as allowed by federal law only to**
21 **support the capital costs incurred for the construction and operation of PEG**
22 **access programming stream or channel content and facilities.**

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

25 **§1371. Customer service standards**

26 **Any holder of a state-issued certificate of franchise authority shall**
27 **comply with 47 C.F.R. 76.309(c). No franchising authority or local**
28 **governmental subdivision shall have the power to require a holder of a state-**
29 **issued certificate of franchise authority to comply with any customer service**

1 standards other than those set forth in this Section.

2 § 1372. Emergency alert services

3 A holder of a state-issued certificate of franchise authority shall comply
4 with the federal Emergency Alert System regulations, as applied by the Federal
5 Communications Commission.

6 § 1373. Indemnification

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

24 §1374. Local governmental authority

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

27 (1) A requirement that the holder of a certificate which is providing
28 cable service or video service within the local governmental subdivision register

1 with the local governmental subdivision and maintain a current point of
2 contact.

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

5 B. A local governmental subdivision shall allow the holder of a certificate
6 to install, construct, and maintain a network within public rights of way and
7 shall provide the holder of a certificate with open, comparable,
8 nondiscriminatory, and competitively neutral access to the public rights of way.
9 If during the installation, construction, or maintenance of said network, the
10 holder disturbs any public right of way, the holder shall replace and restore the
11 public right of way to a condition reasonably comparable to the condition of the
12 public right of way existing immediately prior to such disturbance. All use of
13 public rights of way by the holder of a certificate is nonexclusive, and a local
14 governmental subdivision may not discriminate against the holder of a
15 certificate regarding any of the following items:

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

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

18 (3) Utility pole attachment terms.

19 C. Nothing contained in this Chapter shall impair the lawful exercise of
20 existing police powers of the local governmental subdivisions in which cable
21 service or video service is delivered.

22 §1375. Discrimination prohibited

23 A. A cable service provider or video service provider that has been
24 granted a certificate may not deny access to service to any group of potential
25 residential subscribers based on the income of the residents in the local area in
26 which such group resides.

27 B. For purposes of determining whether a cable service provider or
28 video service provider has violated the provisions of Subsection A of this
29 Section, cost, density, distance, and technological or commercial limitations

1 shall be taken into account. The inability to serve an end user because a holder
2 is prohibited from placing its own facilities in a building or property shall not
3 be found to be a violation of Subsection A of this Section. Use of an alternative
4 technology that provides a comparable content, service, and functionality shall
5 not be considered a violation of Subsection A of this Section. This Section may
6 not be construed as authorizing any general construction or deployment
7 requirements on a cable service provider or video service provider in
8 contravention of R.S. 45:1368.

9 §1376. Compliance

10 If the holder of a certificate is found by a court of competent jurisdiction
11 to be in noncompliance with the requirements of this Chapter, the court shall
12 order the holder of the certificate, within a specified reasonable period of time,
13 to cure the noncompliance. If the holder fails to cure in accordance with the
14 court's order, the court may remedy such non-compliance.

15 §1377. Applicability of other laws

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

23 B. With respect to local governmental subdivisions which have home rule
24 charters adopted after the Constitution of Louisiana was adopted on April 20,
25 1974, and which are governed by Article VI, Section 5 of the Constitution of
26 Louisiana and with respect to other local governmental subdivisions without
27 home rule charters, such local governmental subdivisions are denied the
28 authority to adopt ordinances that are inconsistent with the provisions of this
29 Chapter.

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

3 **§1378. Conforming amendments**

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

7 **(1) R.S. 9:1253.**

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

9 **(3) R.S. 38:2869, 3087.37, 3087.57, 3087.97, 3087.117, 3087.227, and**
 10 **3087.265.**

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

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

16 Section 3. This Act shall become effective upon signature by the governor or, if not
 17 signed by the governor, upon expiration of the time for bills to become law without signature
 18 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 19 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 20 effective on the day following such approval.

The original instrument was prepared by Alan Miller. The following digest,
 which does not constitute a part of the legislative instrument, was prepared
 by Cathy Wells.

DIGEST

Duplessis (SB 807)

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

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

Proposed law provides certain protection for private land owners.

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

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

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

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

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

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

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

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

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

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

Proposed law provides for authority for a local governmental subdivision to impose payment of a franchise fee at a percentage of the holder's gross revenues received from providing

service within the municipality or unincorporated areas of the parish and from advertising disseminated through cable service or video service and home shopping services. Provides that the fee not exceed 5% of the holder's gross revenues as defined by proposed law.

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

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

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

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

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

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

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

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

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

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

Proposed law requires a certificate holder, upon request of a local governmental subdivision without PEG access programming streams or channels, to furnish up to three PEG access programming streams or channels for a local governmental subdivision with a population of at least 50,000 and up to two PEG access programming streams or channels for a local governmental subdivision with a population of less than 50,000. However, a certificate holder shall be required to carry PEG access programming streams or channels on the basic subscription service offered by the provider.

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

Proposed law provides that the operation of any PEG access programming stream or channel provided pursuant to proposed law shall be the responsibility of the municipality or the

parish receiving the benefit of the programming stream or channel and the certificate holder bears only the responsibility for the transmission of the programming stream or channel.

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

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

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

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

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

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

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

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

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

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

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

Proposed law requires the certificate holder to indemnify a local governmental subdivision, its officers, agents, and employees from any liability for damages and for any liability or claims resulting from tangible property damage or bodily injury, including accidental death,

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

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

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

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

Effective upon signature of the governor or lapse of time for gubernatorial action.

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

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill.

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