STATE OF NEW YORK

3615

2017-2018 Regular Sessions

IN ASSEMBLY

January 30, 2017

Introduced by M. of A. DINOWITZ -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public service law, in relation to state-issued franchise of cable or video service

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The public service law is amended by adding a new article 12 to read as follows:

ARTICLE 12

STATE-ISSUED FRANCHISE OF CABLE OR VIDEO SERVICE

Section 241. Franchising authority.
242. Definitions.
243. State authorization to provide cable service or video service.
244. Eligibility for commission-issued franchise.
245. Franchise fee.
246. In-kind contributions to municipality.
247. Customer service standards.
248. Public, educational, and governmental access channels.
249. Nondiscrimination by municipality.
250. Municipal police power; other authority.
251. Indemnity in connection with right-of-way; notice of liability.
252. Municipal authority.
253. Discrimination prohibited.
254. Compliance.
255. Applicability of other laws.
256. Buildout requirements.
257. Enforcement.

§ 241. Franchising authority. The commission shall be designated as the franchising authority for a state-issued franchise for the provision of cable service or video service.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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§ 242. Definitions. In this article:

1. "Actual incremental cost" means only current out-of-pocket expenses for labor, equipment repair, equipment replacement, and tax expenses directly associated with the labor or the equipment of a service provider that is necessarily and directly used to provide what were, under a superseded franchise, in-kind services, exclusive of any profit or overhead such as depreciation, amortization, or administrative expense.

2. "Cable service" is defined as set forth in 47 U.S.C. Section 522(6).

3. "Cable service provider" means a person who provides cable service.

4. "Communications network" means a component or facility that is, wholly or partly, physically located within a public right-of-way and that is used to provide video programming, cable, voice, or data services.

5. "Franchise" means an initial authorization, or renewal of an authorization, issued by a franchising authority, regardless of whether the authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, that authorizes the construction and operation of a cable or video services network in the public rights-of-way.

6. (a) "Gross revenues" means all consideration of any kind or nature including, without limitation, cash, credits, property, and in-kind contributions (services or goods) derived by the holder of a state-issued certificate of franchise authority from the operation of the cable service provider's or the video service provider's network to provide cable service or video service within the municipality. Gross revenue shall include all consideration paid to the holder of a state-issued certificate of franchise authority and its affiliates (to the extent either is acting as a provider of a cable service or video service as authorized by this article), which shall include but not be limited to the following: (i) all fees charged to subscribers for any and all cable service or video service provided by the holder of a state-issued certificate of franchise authority; (ii) any fee imposed on the holder of a state-issued certificate of franchise authority by this article that is passed through and paid by subscribers (including, without limitation, the franchise fee set forth in this article); and (iii) compensation received by the holder of a state-issued certificate of franchise authority or its affiliates that is derived from the operation of the holder of a state-issued certificate of franchise authority's network to provide cable service or video service with respect to commissions that are paid to the holder of a state-issued certificate of franchise authority as compensation for promotion or exhibition of any products or services on the holder of a state-issued certificate of franchise authority's network, such as a "home shopping" or a similar channel, subject to subparagraph (v) of paragraph (b) of this subdivision. Gross revenue includes a pro rata portion of all revenue derived by the holder of a state-issued certificate of franchise authority or its affiliates pursuant to compensation arrangements for advertising derived from the operation of the holder of a state-issued certificate of franchise authority's network to provide cable service or the video service within a municipality, subject to subparagraph (iii) of paragraph (b) of this subdivision. The allocation shall be based on the number of subscribers in the municipality divided by the total number of subscribers in relation to the relevant regional or national compensation arrangement. Advertising commissions paid to third parties shall not be netted against advertising revenue included in gross revenue. Revenue of an

affiliate derived from the affiliate's provision of cable service or the video service shall be gross revenue to the extent the treatment of such revenue as revenue of the affiliate and not of the holder of a state-issued certificate of franchise authority has the effect (whether intentional or unintentional) of evading the payment of fees which would otherwise be paid to the municipality. In no event shall revenue of an affiliate be gross revenue to the holder of a state-issued certificate of franchise authority if such revenue is otherwise subject to fees to be paid to the municipality.

(b) For purposes of this section, "gross revenues" does not include:

(i) any revenue not actually received, even if billed, such as bad debt;

(ii) non-cable services or non-video services revenues received by any affiliate or any other person in exchange for supplying goods or services used by the holder of a state-issued certificate of franchise authority to provide cable service or video service;

(iii) refunds, rebates, or discounts made to subscribers, leased access providers, advertisers, or a municipality;

(iv) any revenues from services classified as non-cable service or non-video service under federal law including, without limitation, revenue received from telecommunications services; revenue received from information services (but not excluding cable services or video services); and any other revenues attributed by the holder of a state-issued certificate of franchise authority to non-cable service or non-video service in accordance with Federal Communications Commission or commission rules, regulations, standards, or orders;

(v) any revenue paid by subscribers to home shopping programmers directly from the sale of merchandise through any home shopping channel offered as part of the cable services or video services, but not excluding any commissions that are paid to the holder of a state-issued certificate of franchise authority as compensation for promotion or exhibition of any products or services on the holder of a state-issued certificate of franchise authority's network, such as a "home shopping" or a similar channel;

(vi) the sale of cable services or video services for resale in which the purchaser is required to collect this articles' fees from the purchaser's customer. Nothing under this article is intended to limit state's rights pursuant to 47 U.S.C. Section 542(h);

(vii) the provision of cable services or video services to customers at no charge, as required or allowed by this article, including, without limitation, the provision of cable services or video services to public institutions, as required or permitted in this article, including, without limitation, public schools or governmental entities, as required or permitted in this article;

(viii) any tax of general applicability imposed upon the holder of a state-issued certificate of franchise authority or upon subscribers by a city, state, federal, or any other governmental entity and required to be collected by the holder of a state-issued certificate of franchise authority and remitted to the taxing entity (including, but not limited to, sales and use tax, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes, and fees not imposed by this article);

(ix) any forgone revenue from the holder of a state-issued certificate of franchise authority's provision of free or reduced cost cable services or video services to any person including, without limitation, employees of the holder of a state-issued certificate of franchise

authority, to the municipality and other public institutions or other institutions as allowed in this article; provided, however, that any forgone revenue which the holder of a state-issued certificate of franchise authority chooses not to receive in exchange for trades, barters, services, or other items of value shall be included in gross revenue;

(x) sales of capital assets or sales of surplus equipment that is not used by the purchaser to receive cable services or video services from the holder of a state-issued certificate of franchise authority;

(xi) directory or Internet advertising revenue including, but not limited to, yellow pages, white pages, banner advertisement, and electronic publishing; and

(xii) reimbursement by programmers of marketing costs incurred by the holder of a state-issued franchise for the introduction of new programming that exceed the actual costs.

(c) For purposes of this definition, a provider's network consists solely of the optical spectrum wavelengths, bandwidth, or other current or future technological capacity used for the transmission of video programming over wireline directly to subscribers within the geographic area within the municipality as designated by the provider in its franchise.

7. "Incumbent cable service provider" means the cable service provider serving the largest number of cable subscribers in a particular municipal franchise area on the effective date of this article.

8. "Public right-of-way" means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which a municipality has an interest.

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

10. "Video service" means video programming services provided through wireline facilities located at least in part in the public right-of-way without regard to delivery technology, including Internet protocol technology. This definition does not include any video service provided by a commercial mobile service provider as defined in 47 U.S.C. Section 332(d).

11. "Video service provider" means a video programming distributor that distributes video programming services through wireline facilities located at least in part in the public right-of-way without regard to delivery technology. This term does not include a cable service provider.

§ 243. State authorization to provide cable service or video service. 1. An entity or person seeking to provide cable service or video service in this state shall file an application for a state-issued certificate of franchise authority with the commission as required by this section. An entity providing cable service or video service under a franchise agreement with a municipality is not subject to this subsection with respect to such municipality until the franchise agreement is terminated or until the franchise agreement expires. Any state-issued certificate of franchise authority shall not include any cable service or video service within a municipality of one million or more.

2. The commission shall notify an applicant for a state-issued certificate of franchise authority whether the applicant's application described by subdivision four of this section is complete or incomplete after the applicant submits the application.

3. The commission may establish a public comment period after receiving a completed application.

4. Within one hundred twenty days of receiving the completed application and if the commission determines such issuance would serve the public interest, the commission shall issue a certificate of franchise authority to offer cable service or video service after receipt of a completed application submitted by the applicant and signed by an officer or general partner of the applicant affirming:

(a) that the applicant has filed or will timely file with the Federal Communications Commission all forms required by that agency in advance of offering cable service or video service in this state;

(b) that the applicant agrees to comply with all applicable federal and state statutes and regulations;

(c) that the applicant agrees to comply with all applicable municipal regulations regarding the use and occupation of public rights-of-way in the delivery of the cable service or video service, including the police powers of the municipalities in which the service is delivered;

(d) a description of the service area footprint to be served within the municipality, if applicable, otherwise the municipality to be served by the applicant, which may include certain designations of unincorporated areas, which description shall be updated by the applicant prior to the expansion of cable service or video service to a previously undesignated service area and, upon such expansion, notice to the commission of the service area to be served by the applicant;

(e) the location of the applicant's principal place of business and the names of the applicant's principal executive officers; and

(f) any other information required by the commission.

5. The certificate of franchise authority issued by the commission shall contain:

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

(b) a grant of authority to use and occupy the public rights-of-way in the delivery of that service, subject to the laws of this state, including the police powers of the municipalities in which the service is delivered; and

(c) a statement that the grant of authority is subject to lawful operation of the cable service or video service by the applicant or its successor in interest.

6. The certificate of franchise authority issued by the commission is fully transferable, subject to approval by the commission that such transfer serves the public interest, to any successor in interest to the applicant to which it is initially granted. A notice of transfer and a public interest statement shall be filed with the commission and each relevant municipality prior to the transfer.

7. The certificate of franchise authority issued by the commission may be terminated by the cable service provider or video service provider by submitting notice to the commission and receiving approval from the commission.

8. The commission may impose a fee on the applicant that shall not exceed the actual and reasonable costs of processing the application and overseeing the certificate shall not be levied for general revenue purposes.

9. A certificate of franchise authority shall only be valid for ten years after the date of issuance, and the applicant shall apply for a renewal of the certificate of franchise authority for each additional 10-year period.

§ 244. Eligibility for commission-issued franchise. 1. A cable service provider or a video service provider that currently has or had previous-

ly received a franchise to provide cable service or video service with respect to such municipalities is not eligible to seek a state-issued certificate of franchise authority under this article as to those municipalities until the expiration date of the existing franchise agreement, except as provided by subdivisions two, three, four, five and six of this section.

2. Beginning January first, two thousand eighteen, a cable service provider or video service provider that is not the incumbent cable service provider and serves fewer than fifty percent of the total cable customers in a particular municipal franchise area may elect to terminate that municipal franchise and seek a state-issued certificate of franchise authority by providing notice to the commission and the affected municipality. The municipal franchise is terminated on the date the commission issues the state-issued certificate of franchise authority.

3. Beginning January first, two thousand nineteen, a cable service provider or video service provider in a municipality with a population of less than three hundred thousand that was not allowed to or did not terminate a municipal franchise under subdivision two of this section may elect to terminate not less than all unexpired franchises in municipalities with a population of less than three hundred thousand and seek a state-issued certificate of franchise authority for each area served under a terminated municipal franchise by providing notice to the commission and each affected municipality. A municipal franchise is terminated on the date the commission issues a state-issued certificate of franchise authority to the provider for the area served under that terminated franchise.

4. A cable service provider or video service provider in a municipality with a population of less than three hundred thousand may terminate a municipal franchise in that municipality in the manner described by subdivision three of this section if:

(a) the cable service provider or video service provider is not the incumbent cable service provider in that municipality; and

(b) the incumbent cable service provider received a state-issued certificate of franchise authority from the commission.

5. A municipality with a population of less than three hundred thousand may enter into an agreement with any cable service provider in the municipality to terminate a municipal cable franchise before the expiration of the franchise. To the extent that the mutually agreed on terms and conditions for early termination of the unexpired municipal cable franchise conflict with a provision of this article, the agreed on terms and conditions control.

6. A cable service provider that elects under subdivision two, three or four of this section to terminate an existing municipal franchise is responsible for remitting to the affected municipality before the ninety-first day after the date the municipal franchise is terminated any accrued but unpaid franchise fees due under the terminated franchise. If the cable service provider has credit remaining from prepaid franchise fees, the provider may deduct the amount of the remaining credit from any future fees or taxes it must pay to the municipality, either directly or through the comptroller.

7. For purposes of this section, a cable service provider or video service provider will be deemed to have or have had a franchise to provide cable service or video service in a specific municipality if any affiliates or successor entity of the cable or video provider has or had a franchise agreement granted by that specific municipality.

8. The terms "affiliates or successor entity" in this section shall include, but not be limited to, any entity receiving, obtaining, or operating under a municipal cable or video franchise through merger, sale, assignment, restructuring, or any other type of transaction.

9. Except as provided in this article, nothing in this article is intended to abrogate, nullify, or adversely affect in any way the contractual rights, duties, and obligations existing and incurred by a cable service provider or a video service provider before the date a franchise expires or the date a provider terminates a franchise under subdivision two or three of this section, as applicable, and owed or owing to any private person, firm, partnership, corporation, or other entity including, without limitation, those obligations measured by and related to the gross revenue hereafter received by the holder of a state-issued certificate of franchise authority for services provided in the geographic area to which such prior franchise or permit applies. All liens, security interests, royalties, and other contracts, rights, and interests in effect on January first, two thousand seventeen, or the date a franchise is terminated under subdivision two or three of this section shall continue in full force and effect, without the necessity for renewal, extension, or continuance, and shall be paid and performed by the holder of a state-issued certificate of franchise authority, and shall apply as though the revenue generated by the holder of a state-issued certificate of franchise authority continued to be generated pursuant to the permit or franchise issued by the prior local franchising authority or municipality within the geographic area to which the prior permit or franchise applies. It shall be a condition to the issuance and continuance of a state-issued certificate of franchise authority that the private contractual rights and obligations herein described continue to be honored, paid, or performed to the same extent as though the cable service provider continued to operate under its prior franchise or permit, for the duration of such state-issued certificate of franchise authority and any renewals or extensions thereof, and that the applicant so agrees. Any person, firm, partnership, corporation, or other entity holding or claiming rights herein reserved may enforce same by an action brought in a court of competent jurisdiction.

§ 245. Franchise fee. 1. The holder of a state-issued certificate of franchise authority shall pay each municipality in which it provides cable service or video service a franchise fee of five percent based upon the definition of gross revenues as set forth in this article. That same franchise fee structure shall apply to any unincorporated areas that are annexed by a municipality after the effective date of the state-issued certificate of franchise authority.

2. The franchise fee payable under this section is to be paid quarterly, within forty-five days after the end of the quarter for the preceding calendar quarter. Each payment shall be accompanied by a summary explaining the basis for the calculation of the fee. A municipality may review the business records of the cable service provider or video service provider to the extent necessary to ensure compensation in accordance with subdivision one of this section, provided that the municipality may only review records that relate to the forty-eight-month period preceding the date of the last franchise fee payment. A municipality may, in the event of a dispute concerning compensation under this section, file a complaint with the commission, who is authorized to order a remedy including, but not limited to, payment.

§ 246. In-kind contributions to municipality. 1. Until the expiration or termination of the incumbent cable service provider's agreement, the

holder of a state-issued certificate of franchise authority shall pay a municipality in which it is offering cable service or video service the same cash payments on a per subscriber basis as required by the incumbent cable service provider's franchise agreement. All cable service providers and all video service providers shall report quarterly to the municipality the total number of subscribers served within the municipality. The amount paid by the holder of a state-issued certificate of franchise authority shall be calculated quarterly by the municipality by multiplying the amount of cash payment under the incumbent cable service provider's franchise agreement by a number derived by dividing the number of subscribers served by a video service provider or cable service provider by the total number of video or cable service subscribers in the municipality. Such pro rata payments are to be paid quarterly to the municipality within forty-five days after the end of the quarter for the preceding calendar quarter.

2. On the expiration or termination of the incumbent cable service provider's agreement, the holder of a state-issued certificate of franchise authority shall pay a municipality in which it is offering cable service or video service one percent of the provider's gross revenues, as defined by this article, or at the municipality's election, the per subscriber fee that was paid to the municipality under the expired or terminated incumbent cable service provider's agreement, in lieu of in-kind compensation and grants. Payments under this subsection shall be paid in the same manner as outlined in section two hundred forty-five of this article.

3. All fees paid to municipalities under this section are paid in accordance with 47 U.S.C. Sections 531 and 541(a)(4)(B) and may be used by the municipality as allowed by federal law; further, these payments are not chargeable as a credit against the franchise fee payments authorized under this article.

4. The holder of a state-issued certificate of franchise authority shall include with a fee paid to a municipality under this section a statement identifying the fee.

5. A municipality that receives fees under this section:

(a) shall maintain revenue from the fees in a separate account established for that purpose;

(b) may not commingle revenue from the fees with any other money;

(c) shall maintain a record of each deposit to and disbursement from the separate account, including a record of the payee and purpose of each disbursement; and

(d) may not spend revenue from the fees except directly from the separate account.

6. The following services shall continue to be provided by the cable provider that was furnishing services pursuant to its municipal cable franchise until the expiration or termination of the franchise and thereafter as provided in paragraphs (a) and (b) of this subdivision:

(a) institutional network capacity, however defined or referred to in the municipal cable franchise but generally referring to a private line data network capacity for use by the municipality for noncommercial purposes, shall continue to be provided at the same capacity as was provided to the municipality prior to the date of expiration or termination, provided that the municipality will compensate the provider for the actual incremental cost of the capacity; and

(b) cable services to community public buildings, such as municipal buildings, schools, and libraries, shall continue to be provided to the same extent provided immediately prior to the date of the termination.

§ 247. Customer service standards. The holder of a state-issued certificate of franchise authority shall comply with all customer service standards required by this article or required by the commission.

§ 248. Public, educational, and governmental access channels. 1. Not later than one hundred twenty days after a request by a municipality, the holder of a state-issued certificate of franchise authority shall provide the municipality with capacity in its communications network to allow public, educational, and governmental (PEG) access channels for noncommercial programming.

2. The holder of a state-issued certificate of franchise authority shall provide no fewer than the number of PEG access channels a municipality has activated under the incumbent cable service provider's franchise agreement as of January first, two thousand eighteen.

3. If a municipality did not have the maximum number of PEG access channels as of January first, two thousand eighteen, as provided by paragraphs (a) and (b) of this subdivision based on the municipality's population on that date, the cable service provider or video service provider shall furnish at the request of the municipality:

(a) up to three PEG channels for a municipality with a population of at least 50,000; and

(b) up to two PEG channels for a municipality with a population of less than 50,000.

4. Any PEG channel provided pursuant to this section that is not utilized by the municipality for at least eight hours a day shall no longer be made available to the municipality, but may be programmed at the cable service provider's or video service provider's discretion. At such time as the municipality can certify to the cable service provider or video service provider a schedule for at least eight hours of daily programming, the cable service provider or video service provider shall restore the previously lost channel but shall be under no obligation to carry that channel on a basic or analog tier.

5. In the event a municipality has not utilized the minimum number of access channels as permitted by subdivision three of this section, access to the additional channel capacity allowed in such subdivision shall be provided upon ninety days' notice if the municipality meets the following standard: if a municipality has one active PEG channel and wishes to activate an additional PEG channel, the initial channel shall be considered to be substantially utilized when twelve hours are programmed on that channel each calendar day. In addition, at least forty percent of the twelve hours of programming for each business day on average over each calendar quarter must be nonrepeat programming. Nonrepeat programming shall include the first three video-castings of a program. If a municipality is entitled to three PEG channels under subdivision three of this section and has in service two active PEG channels, each of the two active channels shall be considered to be substantially utilized when twelve hours are programmed on each channel each calendar day and at least fifty percent of the twelve hours of programming for each business day on average over each calendar quarter is nonrepeat programming for three consecutive calendar quarters.

6. The operation of any PEG access channel provided pursuant to this section shall be the responsibility of the municipality receiving the benefit of such channel, and the holder of a state-issued certificate of franchise authority bears only the responsibility for the transmission of such channel. The holder of a state-issued certificate of franchise

authority shall be responsible for providing the connectivity to each PEG access channel distribution point up to the first two hundred feet.

7. The municipality must ensure that all transmissions, content, or programming to be transmitted over a channel or facility by a holder of a state-issued certificate of franchise authority are provided or submitted to the cable service provider or video service provider in a manner or form that is capable of being accepted and transmitted by a provider, without requirement for additional alteration or change in the content by the provider, over the particular network of the cable service provider or video service provider, which is compatible with the technology or protocol utilized by the cable service provider or video service provider to deliver services.

8. Where technically feasible, the holder of a state-issued certificate of franchise authority that is not an incumbent cable service provider and an incumbent cable service provider, including an incumbent cable service provider that holds a state-issued certificate of franchise authority issued under subdivision three of section two hundred forty-four of this article, shall use reasonable efforts to interconnect their cable or video systems for the purpose of providing PEG programming. Interconnection may be accomplished by direct cable, microwave link, satellite, or other reasonable method of connection. The holder of a state-issued certificate of franchise authority and the incumbent cable service provider shall negotiate in good faith, and the incumbent cable service provider may not withhold interconnection of PEG channels.

9. A municipality may file a complaint with the commission, which is authorized to order a remedy to settle any dispute under this section.

§ 249. Nondiscrimination by municipality. 1. A municipality shall allow the holder of a state-issued certificate of franchise authority to install, construct, and maintain a communications network within a public right-of-way and shall provide the holder of a state-issued certificate of franchise authority with open, comparable, nondiscriminatory, and competitively neutral access to the public right-of-way. All use of a public right-of-way by the holder of a state-issued certificate of franchise authority is nonexclusive and subject to section two hundred fifty of this article.

2. A municipality may not discriminate against the holder of a state-issued certificate of franchise authority regarding:

(a) the authorization or placement of a communications network in a public right-of-way;

(b) access to a building; or

(c) a municipal utility pole attachment term.

§ 250. Municipal police power; other authority. 1. A municipality may enforce police power-based regulations in the management of a public right-of-way that apply to the holder of a state-issued certificate of franchise authority within the municipality. A municipality may enforce police power-based regulations in the management of the activities of the holder of a state-issued certificate of franchise authority to the extent that they are reasonably necessary to protect the health, safety, and welfare of the public. Police power-based regulation of the holder of a state-issued certificate of franchise authority's use of the public right-of-way must be competitively neutral and may not be unreasonable or discriminatory. A municipality may not impose on activities of the holder of a state-issued certificate of franchise authority a requirement:

(a) that particular business offices be located in the municipality;

(b) regarding the filing of reports and documents with the municipality that are not required by state or federal law and that are not related to the use of the public right-of-way except that a municipality may request maps and records maintained in the ordinary course of business for purposes of locating the portions of a communications network that occupy public rights-of-way;

(c) for the inspection of the holder of a state-issued certificate of franchise authority's business records except to the extent permitted under subdivision two of section two hundred forty-five of this article;

(d) for the approval of transfers of ownership or control of the holder of a state-issued certificate of franchise authority's business, except that a municipality may require that the holder of a state-issued certificate of franchise authority maintain a current point of contact and provide notice of a transfer within a reasonable time; or

(e) that the holder of a state-issued certificate of franchise authority that is self-insured under the provisions of state law obtain insurance or bonding for any activities within the municipality, except that a self-insured provider shall provide substantially the same defense and claims processing as an insured provider. A bond may not be required from a provider for any work consisting of aerial construction except that a reasonable bond may be required of a provider that cannot demonstrate a record of at least four years' performance of work in any municipal public right-of-way free of currently unsatisfied claims by a municipality for damage to the right-of-way.

2. Notwithstanding any other law, a municipality may require the issuance of a construction permit to the holder of a state-issued certificate of franchise authority that is locating facilities in or on a public right-of-way in the municipality. The terms of the permit shall be consistent with construction permits issued to other persons excavating in a public right-of-way.

3. In the exercise of its lawful regulatory authority, a municipality shall promptly process all valid and administratively complete applications of the holder of a state-issued certificate of franchise authority for a permit, license, or consent to excavate, set poles, locate lines, construct facilities, make repairs, affect traffic flow, or obtain zoning or subdivision regulation approvals or other similar approvals. A municipality shall make every reasonable effort not to delay or unduly burden the provider in the timely conduct of the provider's business.

4. If there is an emergency necessitating response work or repair, the holder of a state-issued certificate of franchise authority may begin the repair or emergency response work or take any action required under the circumstances without prior approval from the affected municipality, if the holder of a state-issued certificate of franchise authority notifies the municipality as promptly as possible after beginning the work and later obtains any approval required by a municipal ordinance applicable to emergency response work.

5. The commission shall have no jurisdiction to review such police power-based regulations and ordinances adopted by a municipality to manage the public rights-of-way.

§ 251. Indemnity in connection with right-of-way; notice of liability. 1. The holder of a state-issued certificate of franchise authority shall indemnify and hold a municipality and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, including personal or bodily injury

(including death), property damage, or other harm for which recovery of damages is sought, that is found by a court of competent jurisdiction to be caused solely by the negligent act, error, or omission of the holder of a state-issued certificate of franchise authority or any agent, officer, director, representative, employee, affiliate, or subcontractor of the holder of a state-issued certificate of franchise authority or their respective officers, agents, employees, directors, or representatives, while installing, repairing, or maintaining facilities in a public right-of-way. The indemnity provided by this subdivision does not apply to any liability resulting from the negligence of the municipality or its officers, employees, contractors, or subcontractors. If the holder of a state-issued certificate of franchise authority and the municipality are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the municipality under state law and without waiving any defenses of the parties under state law. This subdivision is solely for the benefit of the municipality and the holder of a state-issued certificate of franchise authority and does not create or grant any rights, contractual or otherwise, for or to any other person or entity.

2. The holder of a state-issued certificate of franchise authority and a municipality shall promptly advise the other in writing of any known claim or demand against the holder of a state-issued certificate of franchise authority or the municipality related to or arising out of the holder of a state-issued certificate of franchise authority's activities in a public right-of-way.

3. The commission shall have no jurisdiction to review such police power-based regulations and ordinances adopted by a municipality to manage the public rights-of-way.

§ 252. Municipal authority. In addition to a municipality's authority to exercise its nondiscriminatory police power with respect to public rights-of-way under current law, a municipality's authority to regulate the holder of a state-issued certificate of franchise authority is limited to:

1. a requirement that the holder of a state-issued certificate of franchise authority who is providing cable service or video service within the municipality register with the municipality and maintain a point of contact;

2. the establishment of reasonable guidelines regarding the use of public, educational, and governmental access channels; and

3. submitting reports on any violations of the customer service standards referenced in section two hundred forty-seven of this article.

§ 253. Discrimination prohibited. 1. The purpose of this section is to prevent discrimination among potential residential subscribers.

2. A cable service provider or video service provider that has been granted a state-issued certificate of franchise authority may not deny access to service to any group of potential residential subscribers because of the income of the residents in the local area in which such group resides.

3. An affected person may seek enforcement of the requirements described by subdivision two of this section by initiating a proceeding with the commission. A municipality within which the potential residential cable service or video service subscribers referenced in subdivision two of this section may be considered an affected person for purposes of this section.

4. The holder of a state-issued certificate of franchise authority shall have a reasonable period of time to become capable of providing cable service or video service to all households within the designated franchise area as defined in paragraph (d) of subdivision four of section two hundred forty-three of this article and may satisfy the requirements of this section through the use of an alternative technology that provides comparable content, service, and functionality.

5. Notwithstanding any provision of this article, the commission has the authority to make the determination regarding the comparability of the technology and the service provided. Notwithstanding any provision of this article, the commission has the authority to monitor the deployment of cable services, video services, or alternate technology.

§ 254. Compliance. 1. Should the holder of a state-issued certificate of franchise authority be found by the commission to be in noncompliance with the requirements of this article, the commission shall order the holder of a state-issued certificate of franchise authority, within a specified reasonable period of time, to cure such noncompliance. Failure to comply shall subject the holder of the state-issued franchise of franchise authority to penalties as the commission shall reasonably impose, up to and including revocation of the state-issued certificate of franchise authority granted under this article.

2. The commission is hereby granted the authority, subject to subdivision three of this section, to assess a civil penalty not to exceed one percent of the provider's total annual gross intrastate revenue against any holder of a state-issued certificate of franchise authority when such holder knowingly fails or neglects to comply with any provision of this article or any regulation or order of the commission implementing or enforcing the provisions of this article.

3. Whenever the commission has reason to believe that a holder of a state-issued certificate of franchise authority should be subject to imposition of a civil penalty or penalties as set forth in this subdivision, the commission shall notify such holder. Such notice shall include, but shall not be limited to:

(a) the date and a brief description of the facts and nature of each act or failure to act for which such penalty is proposed;

(b) the amount of each penalty that the commission proposes to assess; and

(c) the option to request a hearing to demonstrate why the proposed penalty or penalties should not be assessed against such holder.

4. Upon a failure by a holder of a state-issued certificate of franchise authority to remit any penalty assessed by the commission pursuant to this section, the commission, through its counsel, may institute an action or special proceeding to collect the penalty in a court of competent jurisdiction.

§ 255. Applicability of other laws. 1. Nothing in this article shall be interpreted to prevent a voice provider, cable service provider or video service provider, or municipality from seeking clarification of its rights and obligations under federal law or to exercise any right or authority under federal or state law.

2. Nothing in this article shall limit the ability of a municipality under existing law to receive compensation for use of the public rights-of-way from entities determined not to be subject to all or part of this article, including, but not limited to, provider of Internet protocol cable or video services, unless such payments are expressly prohibited by federal law.

§ 256. Buildout requirements. If it furthers the public interest, the commission is authorized and may require a cable service provider to comply with a schedule of buildout requirements related to any communications network operated by a holder of a state-issued certificate of franchise authority.

§ 257. Enforcement. The commission is authorized to enforce the provisions of this article which may include but not be limited to issuing orders or adopting rules or regulations to effectuate such enforcement.

§ 2. Subdivisions 1 and 2 of section 219 of the public service law, as added by chapter 83 of the laws of 1995, are amended to read as follows:

1. Notwithstanding any other law, no cable television system, whether or not it is deemed to occupy or use a public thoroughfare, may commence operations or expand the area it serves unless it either;

(a) has been franchised by each municipality in which it proposes to provide or extend service; or

(b) has been issued a state-issued certificate of franchise authority.

2. A municipality or the commission pursuant to article twelve of this chapter shall have the power to require a franchise of any cable television system providing service within the municipality, notwithstanding that said cable television system does not occupy, use or in any way traverse a public street. The provision of any municipal charter or other law authorizing a municipality to require and grant franchises is hereby enlarged and expanded, to the extent necessary, to authorize such franchises.

§ 3. This act shall take effect immediately.