STATE OF NEW YORK

4783

2017-2018 Regular Sessions

IN ASSEMBLY

February 3, 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 authorizing statewide cable franchises for the purposes of competitive cable service, promoting the wide-spread development of high-capacity broadband internet access, and increasing the availability and quality of services in this key economic development area and ensuring the safety, reliability and affordability of telecommunications services

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 11-A to read as follows:

ARTICLE 11-A

STATEWIDE CABLE FRANCHISING AND REGULATION

Section 231. Definitions.
232. Authorization to provide cable service.
233. Public service commission responsibilities.
234. Application for statewide cable franchise.
235. Length of statewide franchise.
236. Termination of a statewide franchise.
237. Abandonment of service.
238. Municipal power and regulation over franchise holders.
239. Payment and remittance of franchise fee.
240. Public, educational and government channels.
241. Cable operator's community commitment.
242. Consumer protection rules.
243. Neutral internet and broadband networks.
244. Deployment requirements for statewide cable franchise.
245. Discrimination in the provisioning of service prohibited.
246. Enforcement.

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

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§ 231. Definitions. The words and phrases used in this article shall have the following meanings unless a different meaning clearly appears in the context.

1. "Cable service" shall mean the one-way transmission to subscribers of video programming; or other programming service, and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service, regardless of the technology utilized by a cable television company to enable such selection or use.

2. "Cable operator" shall mean any person or group of persons (a) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (b) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system, as set forth in 47 U.S.C. § 522(5).

3. "Cable system" shall mean any facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming, without regard to the technology used to deliver such video programming, including internet protocol technology or any successor technology and which is provided to multiple subscribers within a community, as set forth in 47 U.S.C. § 522(7), but such term does not include:

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

(b) a facility that serves subscribers without using any public right-of-way;

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

(d) an open video system that complies with 47 U.S.C. § 573; or

(e) any facilities of any electric utility used solely for operating its electric utility system.

4. "CATV company" shall mean any person or group of persons (a) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (b) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

5. "CATV system" shall mean any facility which receives and amplifies the signals broadcast by one or more television stations and redistributes such signals by wire, cable or other means, or which distributes signals it originates or which are originated by another for viewing by subscribers, whether the wire, cable or other facilities are owned or leased. A "CATV system" shall not include:

(a) the poles or other facilities of any telephone corporation used to provide channel service as a common carrier,

(b) a system serving not more than two hundred fifty subscribers, or

(c) a master antenna system servicing subscribers situated on property under common ownership.

6. "Commission" shall mean the public service commission or any successor agency.

7. "Franchise" shall mean 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 system in the public rights-of-way.

8. "Franchise holder" or "holder" shall mean a person who has received a state-wide franchise, but has not transferred or terminated such franchise authorization, in accordance with the provisions of this article.

9. "Franchising authority" shall mean the public service commission and municipalities which are entitled to require franchises and impose fees in accordance with 47 U.S.C. §§ 522(10) and 542, respectively.

10. "Gross revenues" shall mean any and all revenues, including cash, credits, property or other consideration of any kind or nature arising from, attributable to, or in any way derived directly or indirectly from the operation of the franchisee's cable system (including the studios and other facilities associated therewith) to provide cable services. Gross revenues include, by way of illustration and not limitation, monthly fees charged subscribers for any basic, optional, premium, per-channel, per-program service, or cable programming service; installation, disconnection, reconnection, and change-in-service fees; leased channel fees; late fees and administrative fees, payments, or other consideration received from programmers for carriage of programming on the system; revenues from rentals or sales of converters or other equipment; any studio rental, production equipment, and personnel fees; advertising revenues; barter; revenues from program guides; revenues from the sale or carriage of other cable services; and revenues from home shopping channels and other revenue sharing arrangements. Gross revenues shall include revenues received by any entity other than the franchisee, an affiliate, or another entity that operates the system where necessary to prevent evasion or avoidance of the obligation under this statute to pay the franchise fee. Gross revenues shall not include:

(a) amounts not actually received, even if billed, such as bad debt; refunds, rebates or discounts to subscribers or third parties; or revenue imputed from the provision of cable services for free or at reduced rates to any person as required or allowed by law, including, without limitation, the provision of such services to public institutions, public schools, governmental entities, or employees, other than forgone revenue chosen not to be received in exchange for trades, barters, services, or other items of value; or

(b) any revenue from any charges or fees derived from services classified as non-cable services and information services and any other revenues attributed by the holder of a certificate of approval or systemwide franchise to non-cable services in accordance with federal communications commissions rules, regulations, standards, or orders.

In the case of cable service that may be bundled or integrated functionally with other services, capabilities or applications, the gross revenues shall only include those charges or fees derived from or attributable to the provision of cable service, as reflected on the books and records of the holder of a certificate of approval or a system-wide franchise, as the case may be, in accordance with the rules, regulations, standards and orders of the federal communications commission.

11. "Incumbent cable operator" shall mean the cable operator serving the largest number of cable subscribers in a particular municipal franchise area on the effective date of this article.

12. "Municipality" shall mean a city or town within the state.

13. "Person" shall mean an individual, partnership, association, joint stock company, trust, corporation, government entity, limited liability company or any other entity.

14. "Public right-of-way" shall mean 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.

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

§ 232. Authorization to provide cable service. 1. Notwithstanding any other law to the contrary and subject to the provisions of this article, a person seeking to provide cable service in the state after the effective date of this article may file an application for a statewide franchise with the commission as required by this section. This article does not preclude cable operators from filing individual applications under article eleven of this chapter, provided however that a person filing an application for a statewide franchise with the commission shall be required upon receipt of such franchise to comply with section two hundred forty-two of this article with regard to all in-state broadband and broadband-capable facilities and lines built during the initial build-out period pursuant to the authorization provided by such franchise, and for the period of the initial build-out period with regard to such person's in-state broadband and broadband-capable facilities and lines in existence when such franchise becomes effective.

2. A person, including an incumbent cable operator, providing cable service under a franchise agreement with a franchising authority which existed prior to the effective date of this article is not subject to this section until the franchise agreement expires at the end of its original or any mutually agreeable renewal term, or unless and until the franchising authority and entity providing cable service mutually agree to terminate the existing franchise agreement.

3. Nothing in this section shall restrict a cable operator from applying to the commission for a statewide franchise to provision cable services in territories of the state for which it does not have an existing franchise agreement with a franchising authority. For purposes of this section, a cable operator will be deemed to have a franchise to provide cable service in the jurisdiction of a specific franchising authority if any affiliate, predecessor or successor entity of the cable operator maintains a franchise granted by that franchising authority. The terms "affiliate, predecessor or successor entity" in this section shall include but not be limited to any entity receiving, obtaining or operating under a franchise from a franchising entity for cable service through the grant of a franchise, merger, sale, assignment, restructuring, or any other type of transaction.

4. The commission shall have the franchising authority to issue statewide franchises for the provisioning of cable service under this article. Neither the commission nor any municipality in the state may require the franchise holder to obtain any separate or additional franchise or otherwise impose any fee or other requirement, including but not limited to the regulation of cable service rates, on any franchise holder as a condition of providing cable service, except as provided in this article.

5. 16 NYCRR § 895.3, as amended from time to time, shall not apply to this article.

§ 233. Public service commission responsibilities. 1. The commission shall assign existing permanent staff of such legal, technical and other employees of the commission as may be required for the proper conduct of its cable franchising responsibilities under this article. The powers and duties of the public service commission with respect to statewide franchises shall not exceed those prescribed in this article.

2. The commission shall be responsible for establishing additional administrative procedures and regulations not explicitly granted in this article for the issuance of statewide franchises in accordance with the provisions of this article. The commission's administrative powers and duties shall be limited to the provision found in section two hundred thirty-four of this article and additional powers including the:

(a) Development of procedures to submit, review and document applications filed with the commission;

(b) Review of the initial submission and any updates of the general description of the service area footprint to be served or expanded, including, if applicable, any area within a municipality to be served by an applicant;

(c) Determination and notice of incomplete applications;

(d) Approval of applications and amended applications, or denial of such applications, within the periods designated under the provisions of this article;

(e) Issuance to applicants whose applications are approved for statewide franchises to provide cable service in the service area footprint described in the application; to construct, upgrade, operate or maintain a network capable of providing such service, and to use and occupy the public rights-of-way in the delivery of that service;

(f) Development of procedures to review and document the transfer or termination of a statewide franchise;

(g) Establish guidelines in addition to those developed by municipalities under section two hundred thirty-eight of this article, to deal with any consumer complaints or complaints alleging violations of any provisions of this article. Such guidelines shall be easily accessible to residents of the state and shall be posted on the internet. The commission shall also provide consumer complaint forms on the internet even if municipalities establish their own complaint forms. In such cases, municipalities and the commission will work cooperatively to address consumer complaints.

§ 234. Application for statewide cable franchise. 1. Any person wishing to provide cable service in the state after the effective date of this article may file an application for a statewide franchise with the commission as required by this section. A statewide franchise application shall be accompanied by an application fee of ten thousand dollars that shall be used by the commission to carry out the purposes of this article. Nothing in this section requires that any person or entity file an application for a statewide franchise.

2. Applications for a statewide franchise shall contain but not be limited to:

(a) A statement 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 in this state;

(b) A statement that the applicant agrees to comply with all other applicable federal, state statutes and regulations and all generally applicable municipal ordinances and regulations, including without limitation municipal ordinances and regulations regarding the time, place

and manner of using and occupying public rights-of-way adopted in accordance with state and federal law;

(c) A general description of the service area footprint to be served, including, if applicable, any area within a municipality to be served by the applicant. Such description may be set forth on one or more maps. If the applicant is a telephone corporation or an affiliate of a telephone corporation, the service area will include a description of the territory in which the company provides telephone service. Descriptions of service area footprints shall be updated by the applicant prior to the expansion of cable service to a previously undesignated service area and, upon such expansion, written notice shall be given to the commission of the new service area to be served by the applicant. The state-issued franchise area and any service area within the franchise area may extend beyond the area or areas where the applicant has pre-existing authority to occupy the public rights-of-way;

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

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

(f) The signature of an officer or general partner of the applicant verifying the information set forth in the application;

(g) Demonstrate the financial, technical, managerial and legal character and other qualifications needed to construct, operate, and maintain the necessary plant and to provide service in a safe, adequate and proper manner;

(h) Provide a record of compliance with local, state and federal laws; and

(i) Provide additional information as needed by the commission.

3. Upon filing an application with the commission for a system-wide franchise agreement pursuant to subdivision two of this section, the applicant shall include a list of the specific municipalities to which CATV service will be provided or extended, the anticipated construction and deployment dates, and the anticipated date on which service will be offered and a certified statement that such deployment will meet the requirements of section two hundred forty-four of this article. The applicant will concurrently provide a copy of the application to each affected municipality.

4. Within fifteen business days after it receives the application, the commission shall:

(a) determine whether an application submitted is incomplete; and

(b) if so, the commission shall notify the applicant that the application is incomplete and identify the information that the commission must receive from the applicant to make the application complete.

5. Within sixty business days after it receives the completed application, the commission shall approve the application and issue a statewide franchise to the applicant, or deny the application. Within sixty days of the receipt thereof, the commission shall schedule three public hearings to be held in different geographical areas of the state to gain public comment in consideration of the application. On or before the expiration of the sixty-day period, the commission shall issue an order in writing approving the application if the applicant has complied with the requirements for a statewide franchise, or the commission shall disapprove the application in writing citing the reasons for disapproval

if the board determines that the application for a statewide franchise does not comply with the requirements for a statewide franchise. The commission may deny the application if the applicant has failed to state in the application the information and representations required by subdivision two of this section. If the commission denies the application, it must specify with particularity the reason or reasons for the denial, and the applicant may amend its application to cure any deficiency. The commission shall decide such amended application within ten business days of its submission to the commission by the applicant. If the commission denies the application, the commission shall schedule a public meeting with the applicant to explain to the applicant the reasons for the commission's disapproval. Such meeting shall be scheduled no later than thirty days following the expiration of the sixty-day review period as required by this section. The applicant shall have thirty days following the date of the meeting with the commission to file an appeal of the board's decision. The commission shall thereafter schedule an administrative hearing not later than the thirtieth day following the date of the filing of the applicant's appeal in order to consider the applicant's appeal. The commission shall issue a final decision in written form on the applicant's appeal not later than the sixtieth day following the administrative hearing, required by this subdivision, on the applicant's appeal. After an administrative period an applicant may challenge a denial of its application or amended application in any court of competent jurisdiction.

6. A statewide franchise authorization issued by the commission shall contain:

(a) A grant of a franchise to provide cable service in the service area footprint described in the application; to construct, upgrade, operate or maintain a network capable of providing such service, except where this grant is not required and to use and occupy the public rights-of-way in the delivery of that service; and

(b) A statement that the franchise grant in subdivision one of this section is subject to lawful operation of the cable service by the applicant or its successor in interest.

7. An applicant having pre-existing authority to utilize the public rights-of-way is required to obtain a statewide franchise prior to the actual provision of cable service on a commercial basis directly to subscribers. However, such an applicant is not required to obtain a statewide franchise or any municipality authorization, except for being subject to municipality right-of-way requirements, in order to construct, upgrade, operate or maintain a network that is capable of providing cable service.

8. A system-wide franchise issued by the board shall be nontransferable, except by written consent of the board.

§ 235. Length of statewide franchise. A statewide franchise issued by the commission shall be valid for ten years from the date of issuance. Renewal of a system-wide franchise shall be valid for a period of fifteen years from the date of the renewal issuance, and the commission shall establish rules governing the renewal of a system-wide franchise.

§ 236. Termination of a statewide franchise. 1. A franchise shall terminate at the expiration of its term or otherwise in accordance with the provisions thereof, unless, prior thereto, the commission otherwise orders. The commission may so order only if it finds, after public notice and opportunity for a hearing, that the franchisee:

(a) has committed a material breach of its franchise or any applicable provision of this article or of the regulations promulgated hereunder

and has failed, without reasonable justification, to cure said breach within sixty days after having received written notice thereof from the commission; or

(b) has not met the requirements of sections two hundred forty-three and two hundred forty-four of this article;

(c) has engaged in blocking of lawful content or web sites or services of competitors, or refused to interconnect its facilities with the facilities of another provider of broadband network services on reasonable and nondiscriminatory terms or conditions; or

(d) has been adjudicated as bankrupt or has filed a voluntary petition for bankruptcy or reorganization or for an order protecting its assets from the claims of creditors and the commission finds that termination of the franchise or certificate of confirmation under such conditions is in the best interest of the public.

2. Upon termination of a franchise or certificate of confirmation, the cable operator shall dispose of its facilities in accordance with the provisions of the franchise or certificate. However, on motion of any interested party or upon its own motion, and after public notice and opportunity for hearing, if the commission finds that the continued presence of the facilities in any public thoroughfare would pose a nuisance to the municipality or its residents, the operator shall remove its facilities within such period as the commission shall order. In the absence of any applicable franchise or certificate provision or order by the commission to the contrary, the cable television company may abandon its facilities.

§ 237. Abandonment of service. 1. No cable operator may abandon any service or portion thereof without giving six months' prior written notice to the commission and to the franchisor, if any, and to the municipalities it serves.

2. When abandonment of any service is prohibited by a franchise, no cable operator may abandon such service without written consent of the commission. In granting such consent, the commission may impose such terms, conditions or requirements as in its judgment are necessary to protect the public interest.

§ 238. Municipal power and regulation over franchise holders. A municipality may:

1. Exercise its public rights-of-way authority over franchise holders, including requiring franchise holders to follow municipal ordinances as well as all applicable local, state and federal laws;

2. Receive, mediate, and resolve cable service quality complaints from a franchise holder's customers within the municipality;

3. Require a franchise holder who is providing cable service within the municipality to register with the municipality, maintain a point of contact, and provide notice of any franchise authorization transfer to the municipality within fourteen business days after the completion of the transfer;

4. Establish reasonable guidelines regarding the use of public, educational, and governmental access channels within the municipality in addition to those established in section two hundred forty-one of this article.

§ 239. Payment and remittance of franchise fee. 1. The franchise holder who offers cable service within the jurisdiction of a municipality shall calculate and remit to the municipality at the end of each calendar year quarter a franchise fee, as provided in this section. The obligation to calculate and remit the franchise fee to a municipality begins immediately upon provision of cable service within that municipality's

jurisdiction, but the first remittance shall not be due until the end of the first calendar year quarter that is later than one hundred eighty days after the provision of cable service began.

2. The franchise fee shall be calculated as a percentage of the holder's gross revenues, as defined in section two hundred thirty-one of this article and shall be five percent. A municipality may, by ordinance, change the percentage applied to the gross revenues of the holder.

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

4. No municipality or any other political subdivision of this state may assess any additional fees or charges or require other remuneration of any kind from the franchise holder other than as set forth in this section, provided, however, that the provision of in-kind services or support, personnel and funding dedicated to public, educational and government facilities and services shall not be considered additional fees, charges or remuneration.

5. For purposes of this section, in the case of a cable service that may be bundled or integrated functionally with other services, capabilities or applications, the franchise fee shall be applied only to the gross revenues, as defined in this article, attributable to cable service or the use of the cable system and facilities, as reflected on the books and records of the holder in accordance with generally accepted accounting principles and Federal Communications Commission rules, regulations, standards or orders, as applicable.

6. The franchise fee shall be remitted to the applicable municipality 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 franchise fee. Not more than once annually, a municipality may examine the franchise holder's business records to the extent reasonably necessary to ensure compensation in accordance with this section. Each party shall bear the party's own costs of the examination. Any claims by a municipality that compensation is not in accordance with this section, and any claims for refunds or other corrections to the remittance of the franchise holder, must be made within three years and forty-five days of the end of the quarter for which compensation is remitted, or three years from the date of remittance, whichever is later. Either a municipality or the franchise holder may, in the event of a dispute concerning compensation under this section, bring an action in a court of competent jurisdiction.

§ 240. Public, educational and government channels. 1. In addition to the requirements set forth in 16 NYCRR Sec. 894.4 (as may be amended from time to time), the franchise holder shall provide the municipality with capacity in its cable system to allow public, educational, and governmental (PEG) access channels for noncommercial programming. For the purposes of this section, PEG channels shall be defined as analog channels of six megahertz bandwidth or the same as any other channel on the basic tier, whichever is greater. In addition to the requirements set forth in this section, the commission may issue additional rules or guidelines regarding PEG access channels. The holder shall provide the same ancillary services to the PEG channels and entities as the incumbent provider.

2. The franchise holder shall designate a sufficient amount of capacity on its cable system to allow the provision of a comparable number of PEG channels or hours of programming that the incumbent cable operator has activated and provided within the municipality under the terms of its franchise agreement as of the effective date of this article. If a municipality did not have PEG access channels as of that date, the cable operator shall furnish to the municipality upon request up to three PEG channels for a municipality with a population of at least fifty thousand and up to two PEG channels for a municipality with a population of less than fifty thousand. For the purposes of this section, a PEG channel is deemed activated if it is being utilized for PEG programming within the municipality for at least eight hours per day and if such programming is not broadcast more than once in every eight hours. The holder shall have twelve months from the date the municipality requests such PEG channels to designate the capacity; provided, however, that the twelve-month period shall be tolled by any period during which the designation or provision of PEG channel capacity is technically infeasible, including any failure or delay of the incumbent cable operator to make adequate interconnection available, as required by this section. In cities with a population of one million or more persons, if a system has total activated bandwidth in excess of eight hundred sixty-two megahertz then at least two additional PEG channels shall be set aside by the holder, including one for public access.

3. The franchise holder may submit to the commission an application to cease providing any PEG channel provided pursuant to this section that is not utilized by the municipality for at least eight hours per day, and except as provided herein, the channel may thereafter be programmed at the franchise holder's discretion. The commission may hold a hearing in the municipality to aid in making its determination whether to approve the application. The commission shall issue a decision within thirty business days of the franchisee's application. If the municipality subsequently certifies to the commission and holder a schedule for at least eight hours of daily non-repeat PEG channel programming per channel, the holder shall restore the PEG channel or channels for the use of the municipality for as long as the municipality uses the channel or channels for at least eight hours a day.

4. The content and 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 franchise holder bears only the responsibility for the transmission of such channel, subject to reasonable technological constraints. The franchise holder shall be responsible for providing the connectivity, as well as other equipment necessary, to each PEG access channel programming distribution location and for doing so without charge for up to the first two hundred feet of the holder's connecting facilities.

5. The municipality, or its designees, must ensure that all transmissions, content, or programming to be transmitted over a PEG access channel or facility by a franchise holder are provided or submitted to the cable operator in a manner or form that is capable of being accepted and transmitted by the cable operator, without requirement for additional alteration or change in the content by the cable operator, over the cable system of the cable operator. The municipality's, or its designees' provision of PEG content to the holder shall constitute authorization for the holder to carry such content including, at the holder's option, beyond the jurisdictional boundaries of the municipality.

6. The franchise holder and an incumbent cable operator shall use reasonable efforts to interconnect their cable systems for the purpose of providing PEG programming. Interconnection may be accomplished by direct cable, microwave link, satellite, or other reasonable method of connection. Franchise holders and incumbent cable operators shall negotiate in good faith and incumbent cable operators may not withhold interconnection of PEG channels. In the event a franchise holder and an incumbent cable operator cannot reach a mutually acceptable interconnection agreement, then the duty of the holder shall be discharged if the holder makes interconnection available to the channel originator at a point on the holder's network determined by the holder.

7. The PEG channels shall be for the exclusive use of the local entity or its designee to provide public, educational, and governmental channels. The PEG channels shall be used only for noncommercial purposes. However, advertising, underwriting, or sponsorship recognition may be carried on the channels for the purpose of funding PEG-related activities. The PEG channels shall all be carried on the basic service tier. To the extent feasible, the PEG channels shall not be separated numerically from other channels carried on the basic service tier and the channel numbers for the PEG channels shall be the same channel numbers used by the incumbent cable operator unless prohibited by federal law. After the initial designation of PEG channel numbers, the channel numbers shall not be changed without the agreement of the local entity unless the change is required by federal law. Each channel shall be capable of carrying a national television system committee (NTSC) television signal.

8. The content to be provided over the PEG channel capacity provided pursuant to this section shall be the responsibility of the local entity or its designee receiving the benefit of that capacity, and the holder of a state franchise bears only the responsibility for the transmission of that content, subject to technological restraints.

9. The PEG signal shall be receivable by all subscribers, whether they receive digital or analog service, or a combination thereof, without the need for any equipment other than the equipment necessary to receive the lowest cost tier of service. The PEG access capacity provided shall be of similar quality and functionality to that offered by commercial channels on the lowest cost tier of service unless the signal is provided to the holder at a lower quality or with less functionality.

10. After January first, two thousand seventeen, and until the expiration of the incumbent cable operator's franchise, if the incumbent cable operator has existing unsatisfied obligations under the franchise to remit to the local entity or its designee any cash payments for the ongoing costs of public, educational, and government access channel facilities, the local entity, or its designee for the public access channels, shall divide those cash payments among all cable or video providers as provided in this section. The fee shall be the holder's pro rata per subscriber share of the cash payment required to be paid by the incumbent cable operator to the local entity or its designee community access organization for the costs of PEG channel facilities. All video service providers and the incumbent cable operator shall be subject to the same requirements for recurring payments for the support of PEG channel facilities, whether expressed as a percentage of gross revenue or as an amount per subscriber, per month, or otherwise.

11. A local entity shall establish a payment for the ongoing support of the cost of PEG facilities and services that would become effective subsequent to the expiration of any fee imposed by this article,

provided, however, that no such fee shall be allocated such that any community access organization is receiving anything less than what it is receiving from the cable operator on the effective date of this legislation, and provided, however, that every local entity shall be entitled to a payment of not less than two percent from the holder of a state franchise for the ongoing support of the cost of PEG facilities and services. If, on December thirty-first, two thousand sixteen, a local entity or its designee was imposing a separate fee to support PEG channel facilities that is in excess of two percent, that entity or its designee may establish a fee no greater than that separate fee, and in no event greater than three percent, to support PEG activities. If the PEG support fee imposed by a local entity or its designee is expressed in a manner other than as a percentage of gross revenues, the local entity or its designee community access organization may convert that fee to a currently equivalent percentage of gross revenues at any time. The local entity or its designee may adopt requirements for the provision of PEG-related in-kind resources by all cable and video service providers.

12. Rules and regulations adopted by the community access organization shall govern the use of any channel time on the public channels as well as the equipment, facilities and services related to the public channels.

13. The commission, through an administrative proceeding shall have the original jurisdiction to enforce any requirements under this section to resolve any dispute regarding the requirements set forth in this section. After the administrative process is exhausted, a court of competent jurisdiction shall have jurisdiction to enforce any requirement under this section or resolve any dispute regarding the requirements set forth in this section, and no cable operator may be barred from the provision of cable service or be required to terminate cable service as a result of such dispute or enforcement action.

§ 241. Cable operator's community commitment. 1. Cable operators shall install and retain or provide, without charge, one service outlet activated for basic service to any and all fire stations, public schools, police stations, public libraries and other such buildings used for municipal purposes.

2. Cable operators shall provide internet service, without charge, through one service outlet activated for basic service to any and all fire stations, public schools, police stations, public libraries, and other such buildings used for municipal purposes.

§ 242. Consumer protection rules. 1. Every cable operator shall provide safe, adequate and reliable service in accordance with applicable laws, regulations, and franchise requirements. Cable operators with a statewide franchise are subject to the requirements under sections two hundred twenty-four and two hundred twenty-four-a of this chapter and any other customer service standards pertaining to the provision of video service established by federal law or regulation or adopted by subsequent enactment of the legislature. All customer service and consumer protection standards under this section shall be interpreted and applied to accommodate newer or different technologies while meeting or exceeding the goals of these standards.

2. In addition, cable operators shall:

(a) clearly and conspicuously disclose to users, in plain language, accurate information concerning any terms, conditions, or limitations on the broadband network service they offer, the speeds of the download and uploading speeds of the provider's internet service;

(b) provide their broadband network services on reasonable and nondiscriminatory terms and conditions such that any person can offer or provide content, applications, or services to or over the network in a manner that is at least equal to the manner in which the provider or its affiliates offer content, applications, and services, free of any surcharge on the basis of the content, application, or service;

(c) interconnect their facilities with the facilities of other providers of broadband network services on reasonable and nondiscriminatory terms or conditions.

§ 243. Neutral internet and broadband networks. 1. Cable operators shall not:

(a) block, impair, discriminate against, or interfere with the ability of any person to use internet based traffic based on the source, destination, or ownership of the internet traffic that carries video service, in a manner that degrades or otherwise negatively impacts the access to, or the quality of services received by an end user;

(b) engage in any exclusive or preferential dealings regarding the carriage and treatment of internet traffic, including, but not limited to, traffic that carries video programming or video service, with an affiliate or third party provider of internet applications, services, content, or video services;

(c) impose an additional charge to avoid any conduct that is prohibited by this section;

(d) prohibit a user from attaching or using a device on the provider's internet or broadband network that does not physically damage or materially degrade other users' utilization of the network.

2. Nothing in this section shall be construed to prevent a broadband or internet network provider from taking reasonable and nondiscriminatory measures:

(a) to manage the functioning of its network to protect the security and to offer parental controls and other consumer protection measures of such network and broadband or internet network services if such management does not result in discrimination among the content, applications, or services on the network;

(b) to give priority to emergency communications; or

(c) to prevent a violation of a federal or state law, or to comply with an order of a court to enforce such law, or such other action against network threats as may be authorized in section two hundred fifteen of this chapter.

§ 244. Deployment requirements for statewide cable franchise. 1. As part of any franchise issued by the commission in this article, a cable operator shall be required to:

(a) Begin providing cable service on a commercial basis, within three years of issuance of the system-wide franchise, in:

(i) each county seat that is within the CATV company's service area; and

(ii) each municipality within the CATV company's service area that has a population density greater than seventy-one hundred eleven persons per square mile of land area, as determined by the most recent federal decennial census, provided, however, that if such county seats are not located within or contiguous to such municipalities, each such county seat shall be interconnected to the nearest municipality with a population density greater than persons per square mile of land area by the cable operator; and

(b) Make cable television service available throughout the residential areas on a commercial basis, before the beginning of the sixth year after the issuance of the system-wide franchise, in:

(i) each municipality within the state that has a population density greater than five hundred one persons per square mile of land area, as determined by the most recent federal decennial census; and

(ii) throughout the residential areas of any municipalities served by central offices located within a county seat within the franchisee's service area, subject to the cable operator's line extension policy; provided, however, a CATV company may apply to the commission for an exemption from this requirement if the board finds, after conducting a hearing with full notice and opportunity to be heard, that the areas in question are areas in which the CATV company is unable to access the public rights-of-way under reasonable terms and conditions.

2. The requirements of subdivision one of this section shall only apply to cable operators that on the date of the issuance of the system-wide franchise provide more than forty percent of the local exchange telephone service market in this state; and to cable operators that on the date of the issuance of the system-wide franchise provide two hundred fifty thousand or more local exchange telephone lines in this state;

3. Incumbent cable companies that become statewide franchise holders shall not reduce the number or percentage of households served; will build out to all residential households subject to the operator's line extension policy within three years; and will upgrade their facilities to the entire service area within three years of the date the cable operator upgrades any part of its facilities.

4. Within three years of the issuance of the system-wide franchise all other statewide franchise holders shall fully complete a system capable of providing cable service to all households within the cable operator's service area, subject to the cable operator's line extension policy.

§ 245. Discrimination in the provisioning of service prohibited. 1. The franchise holder shall become capable of providing cable service to all households within the designated service area footprint. A cable operator that has been granted a statewide franchise under this article shall not deny access to cable service to any group of potential residential subscribers because of the income or race of the residents in the local area in which such group resides. A franchisee must submit to the commission a deployment schedule, setting forth the municipalities to be served, the date service shall begin in each proposed municipality, and a date certain by which each community will be able to receive cable service. The commission will ensure that the build-out process is not discriminatory based on an area's class or race. If deployment of cable services under a statewide franchise is scheduled for deployment in a given area, the cable operator must offer service to all residents within the geographic area or the commission may terminate the franchise pursuant to section two hundred thirty-six of this article.

2. Notwithstanding any other provision of law, the franchise holder shall comply with customer service requirements set forth in article eleven of this chapter, at 47 C.F.R. § 76.309(c) and any other customer service standards pertaining to the provision of video service established by federal law or regulation or by subsequent enactment of the legislature. All customer service and consumer protection standards under this section shall be interpreted and applied to accommodate newer

or different technologies while meeting or exceeding the goals of these standards.

3. If the commission determines that a cable operator has denied access of cable service to a group of potential residential subscribers because of the income levels of the residents of the local area in which such group resides or has failed to meet the requirements of this section, the commission is authorized to, after conducting a hearing with full notice and opportunity to be heard, impose monetary penalties of not less than fifty thousand dollars, nor more than one hundred thousand dollars per municipality, not to exceed a total of three million six hundred fifty thousand dollars per year for all violations. A municipality in which the provider offers cable service shall be an appropriate party in any such proceeding.

§ 246. Enforcement. The exclusive remedy for enforcing the provisions of this article, notwithstanding specific sections of this article, shall be an action in a court of competent jurisdiction brought by either the municipality, the attorney general on behalf of the commission or other injured party. At least sixty days before bringing such an action, the municipality or attorney general shall serve the franchise holder with a notice setting out the alleged violation and stating that an action may be brought unless the holder corrects the alleged violation or enters into a binding agreement to correct the violation within the sixty-day notice period. The notice shall contain a sufficiently detailed description of the alleged violation to enable the franchise holder to make a specific response.

§ 2. This act shall take effect immediately.