109TH CONGRESS
2D Session

S.

To reform the franchise procedure relating to cable service and video service, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mrs. Hutchison introduced the following bill; which was read twice and referred to the Committee on

A BILL

To reform the franchise procedure relating to cable service and video service, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3
4 SEC. 1. SHORT TITLE.
5 This Act may be cited as the “Franchise Reform Act
6 of 2006”.
7
8 SEC. 2. STATE CABLE AND VIDEO FRANCHISING.
9 Part III of title VI of the Communications Act of
10 1934 (47 U.S.C. 541 et seq.) is amended by adding at
11 the end the following new section:
“SEC. 630. FRANCHISING AUTHORITY.

“(a) State Commissions Designated as Franchising Authority.—The State Commission of each State shall be designated as the franchising authority for any state-issued franchise for the provision of cable service or video service in that State.

“(b) State Authorization to Provide Cable Service or Video Service.—

“(1) Application for Franchise.—

“(A) In General.—An entity or person seeking to provide cable service or video service in a State shall file an application for a state-issued certificate of franchise authority with the State Commission.

“(B) Existing Franchises.—Except as provided in subsection (c), an entity providing cable service or video service under an existing franchise agreement with a municipality shall not be subject to the requirement under subparagraph (A) with respect to such municipality until such franchise agreement expires.

“(2) Notice.—

“(A) In General.—Not later than 15 business days after an applicant for a state-issued certificate of franchise authority submits an affidavit, a State Commission shall notify
such applicant whether such affidavit is complete.

“(3) AFFIDAVIT.—For purposes of this subsection the term ‘affidavit’ means an application for a state-issued certificate of franchise authority—

“(A) submitted by an entity or person;

“(B) signed by such person or the officer or general partner of an entity; and

“(C) that affirms—

“(i) that such entity or person has filed, or will timely file with the Commission all forms required by the Commission;

“(ii) that such entity or person agrees to comply with all applicable Federal and State statutes and regulations;

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

“(iv) a description of the service area footprint to be served within the municipality, if such description is applicable,
otherwise the municipality to be served by such service, including designations of unincorporated areas, which description shall—

“(I) be updated by such entity or person prior to the expansion of cable service or video service to a previously undesignated service area; and

“(II) upon such expansion, provide notice to the State Commission of the service area to be served by the applicant; and

“(v) the location of the principal place of business of such entity or person and the names of the principal executive officers of such entity.

“(4) ISSUANCE.—Not later than 17 business days after a State Commission receives a completed affidavit from an applicant, the State Commission shall issue a certificate of franchise authority to such applicant.

“(5) CONTENTS OF CERTIFICATE OF FRANCHISE AUTHORITY.—A certificate of franchise authority issued by a State 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 the State in which the State Commission is located, including the police powers of the municipalities in which the service is delivered; and

“(C) a statement that the grant of authority to operate a franchise under this section shall be subject to lawful operation of cable service or video service by any applicant for such authority, or any successor in interest to such applicant.

“(6) TRANSFER.—

“(A) IN GENERAL.—A certificate of franchise authority issued by a State Commission under this section shall be fully transferable to any successor in interest to the applicant to which such certificate was initially granted.

“(B) NOTICE.—Not later than 14 business days after the completion of any transfer under subparagraph (A), a notice of transfer shall be filed with each relevant—
“(i) State Commission; and

“(ii) municipality.

“(7) TERMINATION.—A certificate of franchise authority issued by a State Commission under this section may be terminated by a cable service provider or video service provider by submitting a notice of termination to such State Commission.

“(c) ELIGIBILITY FOR UNIFORM STATE-ISSUED FRANCHISE.—

“(1) PRIOR FRANCHISE AGREEMENT.—Subject to paragraphs (2) and (3), a cable service provider or a video service provider that currently has or had previously received a franchise to provide cable service or video service with respect to a municipality may not be eligible to seek a state-issued certificate of franchise authority under this section as to such municipality until the date of expiration of any existing franchise agreement between such provider and such municipality.

“(2) SMALL INCUMBENT CABLE SERVICE PROVIDERS.—

“(A) IN GENERAL.—A cable service provider or video service provider that is not an incumbent cable service provider and serves fewer than 40 percent of the total cable customers in
a particular local franchise area may elect to
terminate that local franchise and seek a state-
issued certificate of franchise under subsection
(b) by providing written notice to the relevant
State Commission and any affected munici-
pality not later than 120 days after the date of
enactment of the Franchise Reform Act of
2006.

“(B) TERMINATION DATE.—Any local
franchise terminated in accordance with sub-
paragraph (A) shall terminate on the date a
State Commission issues a state-issued certifi-
cate of franchise authority.

“(3) REMITTANCE OF UNPAID FRANCHISE
FEES.—

“(A) IN GENERAL.—A cable service pro-
vider that serves fewer than 40 percent of the
total cable customers in a local franchise area
and that elects under paragraph (2) to termi-
nate an existing local franchise shall be respon-
sible for remitting to the affected local fran-
chise authority not later than the 91st day after
the date the local franchise is terminated any
accrued but unpaid franchise fees due under
the terminated franchise.
“(B) CREDITS.—If a cable service provider has credit remaining from prepaid franchise fees, such provider may deduct the amount of the remaining credit from any future fees or taxes such provider is required to pay to the municipality, either directly or through an appropriate State agency.

“(4) RULE OF CONSTRUCTION.—For purposes of this section, a cable service provider or video service provider shall be deemed to have or have had a franchise to provide cable service or video service in a specific municipality if any affiliates, successor, or predecessor entity of such cable or video provider has or had a franchise agreement granted by that specific municipality.

“(5) DEFINITION.—For purposes of this subsection the terms ‘affiliates, successor, or predecessor entity’ include any entity receiving, obtaining, or operating under a municipal cable or video franchise through merger, sale, assignment, restructuring, or any other type of transaction.

“(d) FRANCHISE FEE PAID TO MUNICIPALITIES.—

“(1) FEES.—

“(A) IN GENERAL.—A holder of any state-issued certificate of franchise authority shall
pay each municipality in which such holder pro-
vides cable service or video service a franchise
fee of 5 percent of the gross revenues of such
holder.

“(B) UNINCORPORATED AREAS.—The fee
established under subparagraph (A) shall apply
to any unincorporated area that is annexed by
a municipality after the effective date of the
state-issued certificate of franchise authority.

“(2) FEE STRUCTURE.—

“(A) TIMING.—A franchise fee payable
under this subsection shall be paid quarterly,
not later than 45 days after the end of the
quarter for the preceding calendar quarter.

“(B) SUMMARY.—Each payment of a fran-
chise fee under this subsection shall be accom-
panied by a summary explaining the basis for
the calculation of such fee.

“(C) AUDIT.—

“(i) IN GENERAL.—A municipality
may review the business records of any
cable service provider or video service pro-
vider to the extent necessary to ensure
compensation in accordance with this sub-
section.
“(ii) Cost.—Each party to a review
under clause (i) shall bear the party’s own
costs of such examination.

“(D) Civil action.—If a dispute con-
cerning compensation arises under this sub-
section, a municipality may bring an action in
any court of competent jurisdiction.

“(3) Recovery of fee.—A holder of a state-
issued certificate of franchise authority may recover
from the customers of such holder any fee imposed
by this subsection.

“(e) In-kind contributions to municipality.—

“(1) Existing franchises.—

“(A) In general.—Until the expiration of
an incumbent cable service provider’s existing
franchise agreement with a municipality, a
holder of a state-issued certificate of franchise
authority shall pay each municipality in which
such holder is offering cable service or video
service the same cash payments on a per sub-
scriber basis as required by the existing fran-
chise agreement of such incumbent cable service
provider.

“(B) Report requirement.—Each cable
service provider and each video service provider
shall report quarterly to a municipality the total number of subscribers served by such provider within that municipality.

“(C) AMOUNT TO BE PAID.—The amount paid by a holder of a state-issued certificate of franchise authority shall be calculated quarterly by a municipality by multiplying the amount of cash payments 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.

“(D) TIMING OF PAYMENTS.—Any payments required under this paragraph shall be paid quarterly by a holder of a state-issued certificate of franchise authority to a municipality not later than 45 days after the end of the quarter for the preceding calendar quarter.

“(2) EXPIRATION OF EXISTING AGREEMENTS.—

“(A) IN GENERAL.—On the expiration of an incumbent cable service provider’s existing franchise agreement with a municipality, a
holder of a state-issued certificate of franchise authority shall pay—

“(i) each municipality in which such holder is offering cable service or video service 1 percent of the gross revenues of such holder; or

“(ii) at the election of a municipality, the per subscriber fee that was paid to that municipality under the expired incumbent cable service provider’s agreement, in lieu of in-kind compensation and grants.

“(B) Timing.—Any payment under this paragraph shall be paid in the same manner as described in paragraph (1)(D).

“(3) Rules of construction.—All fees paid to a municipality under this subsection—

“(A) shall be paid in accordance with sections 531 and 541(a)(4)(B);

“(B) may be used by the municipality as allowed by Federal law; and

“(C) may not be chargeable as a credit against the franchise fee payments authorized under this section.

“(4) Construction of service.—Upon the later of 2 years after the date of enactment of the
Franchise Reform Act of 2006, or the expiration of the term of any existing franchise agreement between a municipality and a cable service provider or video service provider, the following services shall continue to be provided by such cable service provider or video service provider:

“(A) Institutional network capacity, however such term is defined or referred to in the existing franchise agreement but generally referring to a private line data network capacity for use by the municipality for noncommercial purposes, at the same capacity as was provided to the municipality prior to the date of the termination, only if the municipality agrees to compensate the cable service provider or video service provider for the actual incremental cost of such capacity.

“(B) Cable services to community public buildings, such as municipal buildings and public schools, to the same extent such services were provided immediately prior to the date of the termination.

“(5) Future provisions of certain services.—Upon the expiration of the period described in paragraph (4), any cable service provider or video
service provider that provides the services described in subparagraphs (A) or (B) of paragraph (4) may deduct from the franchise fee to be paid to a municipality an amount equal to the actual incremental cost of such services if the municipality requires such services after that date.

“(6) DEFINITION OF CABLE SERVICE.—For purposes of this subsection, the term ‘cable service’ generally refers to the existing cable drop connections to public facilities and the tier of cable service provided pursuant to the franchise agreement at the time of the termination of such agreement.

“(f) NO MANDATORY BUILD-OUT PROVISIONS.—A holder of a state-issued certificate of franchise authority shall not be required to comply with any mandatory build-out provisions.

“(g) CUSTOMER SERVICE STANDARDS.—A holder of a state-issued certificate of franchise authority shall comply with customer service requirements consistent with section 76.309(c) of title 47, Code of Federal Regulations, until there are 2 or more providers offering service in a municipality, excluding direct-to-home satellite service providers.

“(h) PUBLIC, EDUCATIONAL, AND GOVERNMENTAL ACCESS CHANNELS.—
“(1) Provision of capacity.—Not later than 120 days after a request by a municipality, a holder of a state-issued certificate of franchise authority shall provide such municipality with capacity in the communications network of such holder to allow public, educational, and governmental access channels for noncommercial programming.

“(2) Number of PEG channels.—A holder of a state-issued certificate of franchise authority shall provide no fewer than the same number of public, educational, and governmental access channels to a municipality than were provided to such municipality under the incumbent cable service provider’s franchise agreement as of the date of enactment of the Franchise Reform Act of 2006.

“(3) Minimum number PEG channels.—If a municipality had no public, educational, and governmental access channels as of the date of enactment of the Franchise Reform Act of 2006, a cable service provider or video service provider shall furnish—

“(A) up to 3 public, educational, and governmental channels for a municipality with a population of at least 50,000; and
“(B) up to 2 public, educational, and governmental channels for a municipality with a population of less than 50,000.

“(4) NONUTILIZATION OF PEG CHANNELS.—

“(A) IN GENERAL.—Any public, educational, and governmental channel provided pursuant to this subsection that is not utilized by a municipality for at least 8 hours a day shall no longer be made available to such municipality, but may be programmed at the discretion of a cable service provider or video service provider.

“(B) RETURN OF PEG CHANNEL.—

“(i) IN GENERAL.—At such time as a municipality can certify to a cable service provider or video service provider that a schedule for at least 8 hours of daily programming exists, such cable service provider or video service provider shall restore any channel previously reprogrammed under subparagraph (A).

“(ii) LIMITATION.—A cable service provider or video service provider shall be under no obligation to carry on a basic or
(5) ADDITIONAL CHANNEL CAPACITY.—In the event a municipality has not utilized the minimum number of access channels as permitted by paragraph (3), access to that additional channel capacity shall be provided to a municipality not later than 90 days after written notice from such municipality, if the municipality meets the following standards:

“(A) If a municipality has 1 active public, educational, and governmental channel and wishes to activate an additional public, educational, and governmental channel, such active channel must be substantially utilized. A channel under this subparagraph shall be considered to be substantially utilized when 12 hours are programmed on that channel each calendar day.

“(B) At least 40 percent of the 12 hours of programming required under subparagraph (A) for each business day on average over each calendar quarter shall be non repeat programming. Non repeat programming shall include the first 3 video-castings of a program.

“(C)(i) If a municipality is entitled to 3 public, educational, and governmental channels
under paragraph (3) and has in service 2 active
public, educational, and governmental channels,
each of the 2 active channels must be substan-
tially utilized.

“(ii) A channel under this subparagraph
shall be considered to be substantially utilized
when—

“(I) 12 hours are programmed on
each channel each calendar day; and

“(II) at least 50 percent of the 12
hours of programming for each business
day on average over each calendar quarter
is non repeat programming for 3 consecu-
tive calendar quarters.

“(6) OPERATIONAL RESPONSIBILITY.—

“(A) IN GENERAL.—The operation of any
public, educational, and governmental access
channel provided pursuant to this subsection
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.

“(B) CONNECTIVITY.—A holder of a state-
issued certificate of franchise authority shall be
responsible for providing the connectivity to each public, educational, and governmental access channel distribution point up to the first 200 feet.

"(7) ADDITIONAL RESPONSIBILITIES AND MUNICIPALITY.—

"(A) IN GENERAL.—Each municipality shall 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 is 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 such provider.

"(B) OTHER REQUIREMENTS.—Any transmission, content, or programming transmitted in accordance with the requirements of subparagraph (A) shall be transmitted—

"(i) without requirement for additional alteration or change in the content by a cable service or video service provider over the particular network of such provider; and
“(ii) in a manner compatible with the technology or protocol utilized by such provider to deliver services.

“(8) INTERCONNECTION.—

“(A) IN GENERAL.—To the maximum extent that is technically feasible, a holder of a state-issued certificate of franchise authority and an incumbent cable service provider shall use reasonable efforts to interconnect the cable or video systems of each for the purpose of providing public, educational, and governmental programming.

“(B) METHODS OF CONNECTION.—Interconnection under this paragraph may be accomplished by direct cable, microwave link, satellite, or any other reasonable method of connection.

“(C) REQUIREMENT OF GOOD FAITH.—A holder of a state-issued certificate of franchise authority and incumbent cable service providers shall each negotiate in good faith with the other and the incumbent cable service provider may not withhold interconnection of public, educational, and governmental channels.

“(9) JURISDICTION OF COURTS.—A court of competent jurisdiction shall have exclusive jurisdic-
tion to enforce any requirement under this sub-
section.

“(i) NONDISCRIMINATION BY MUNICIPALITY.—

“(1) PUBLIC RIGHT-OF-WAY.—

“(A) IN GENERAL.—A municipality shall—

“(i) allow a holder of a state-issued
certificate of franchise authority to install,
construct, and maintain a communications
network within a public right-of-way; and

“(ii) provide such holder with open,
comparable, nondiscriminatory, and com-
petitively neutral access to the public right-
of-way.

“(B) LIMITATION.—All use of a public
right-of-way by a holder of a state-issued cer-
tificate of franchise authority is nonexclusive
and subject to subsection (j).

“(2) NONDISCRIMINATION.—A municipality
may not discriminate against a 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) the term of any municipal utility pole attachment.

“(j) MUNICIPAL POLICE POWER; OTHER AUTHORITY.—

“(1) POLICE POWERS.—

“(A) IN GENERAL.—A municipality may enforce police power-based regulations in the management of any public right-of-way that applies to a holder of a state-issued certificate of franchise authority within the municipality.

“(B) EXTENT OF PUBLIC POWER.—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 such regulations are reasonably necessary to protect the health, safety, and welfare of the public.

“(C) COMPETITIVELY NEUTRAL ENFORCEMENT.—Any police power-based regulation of a holder of a state-issued certificate of franchise authority's use of the public right-of-way—

“(i) shall be competitively neutral; and

“(ii) may not be unreasonable or discriminatory.
“(D) OTHER LIMITATIONS.—A municipality may not require that a holder of a state-issued certificate of franchise authority—

“(i) locate a business office in the municipality;

“(ii) file reports and documents with the municipality that are not required by Federal or State law and that are not related to the use of the public right-of-way, except that the municipality may request, and shall keep confidential, maps and records maintained by the holder in the ordinary course of business for purposes of locating the portions of the communications network of such holder that occupy public rights-of-way;

“(iii) provide the municipality with any information concerning the capacity or technical configuration of the facilities of such holder;

“(iv) provide for inspection the business records of such holder except to extent permitted under subsection (d)(2);

“(v) seek approval of transfers of ownership or control of the business of
such holder, except that a municipality may require that such holder maintain a current point of contact and provide notice of a transfer within a reasonable time;

“(vi) 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 holder shall provide substantially the same defense and claims processing as a non self-insured holder; and

“(vii) possess a bond for any work consisting of aerial construction, except that a reasonable bond may be required of a holder that cannot demonstrate a record of at least 4 years’ performance of work in any municipal public right-of-way free of currently unsatisfied claims by the municipality for damage to the right-of-way.

“(2) CONSTRUCTION PERMITS.—

“(A) IN GENERAL.—A municipality may require the issuance of a construction permit, without cost, to a holder of a state-issued certificate of franchise authority that is locating
facilities in or on a public right-of-way in that municipality.

“(B) TERMS.—The terms of any permit required under subparagraph (A) shall be consistent with other construction permits issued by a municipality to other persons excavating in a public right-of-way.

“(3) PROCESSING OF REQUESTS.—

“(A) IN GENERAL.—In the exercise of any lawful regulatory authority possessed by a municipality, such municipality shall promptly process all valid and administratively complete applications submitted by a holder of a state-issued certificate of franchise authority for a permit, license, or consent to—

“(i) excavate;
“(ii) set poles;
“(iii) locate lines;
“(iv) construct facilities;
“(v) make repairs;
“(vi) affect traffic flow; or
“(vii) obtain zoning or subdivision regulation approvals or other similar approvals.
“(B) Reasonable effort required.—A municipality shall make every reasonable effort not to delay or unduly burden a holder of a state-issued certificate of franchise authority in the timely conduct of the business of such holder.

“(4) Emergency.—If there is an emergency necessitating response work or repair, a holder of a state-issued certificate of franchise authority may begin such repair or emergency response work or take any other action required under the circumstances without prior approval from the affected municipality, if the holder of a state-issued certificate of franchise authority—

“(A) notifies the municipality as promptly as possible after beginning the work; and

“(B) later obtains any approval required by a municipal ordinance applicable to emergency response work.

“(5) No review of police powers.—No State Commission, State agency, or Federal agency shall have jurisdiction to review any police power-based regulation or ordinance adopted by a municipality to manage the public rights-of-way in such municipality.
“(k) MUNICIPAL AUTHORITY.—

“(1) LIMITATION.—In addition to any authority exercised, permitted, or established under subsection (j) with respect to public rights-of-way located in a municipality, the authority of a municipality to regulate a holder of a state-issued certificate of franchise authority is limited to—

“(A) requiring that any holder who is providing cable service or video service within the municipality register with the municipality and maintain a point of contact;

“(B) establishing reasonable guidelines regarding the use of public, educational, and governmental access channels; and

“(C) requiring a holder to submit reports to the Commission on the customer service standards referred to in subsection (g), if such holder—

“(i) is subject to such standards; and

“(ii) has continued and unresolved customer service complaints indicating a clear failure on the part of such holder to comply with such standards.

“(l) DISCRIMINATION PROHIBITED.—
“(1) PURPOSE.—The purpose of this subsection is to prevent discrimination among potential residential subscribers by holders of a state-issued certificate of franchise authority.

“(2) INCOME NOT A FACTOR.—A cable service provider or video service provider that is a holder of a state-issued certificate of franchise authority may not deny access to cable or video 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) ENFORCEMENT.—

“(A) PROCEEDINGS.—Any person affected by this subsection may seek enforcement of the requirements described in paragraph (2) by initiating a proceeding with the State Commission in which such person is located.

“(B) RULE OF CONSTRUCTION.—A municipality may be considered an affected person for purposes of this subsection.

“(4) SAFE HARBOR.—A holder of a state-issued certificate of franchise authority—

“(A) shall be provided a reasonable period of time to become capable of providing cable
service or video service to all households within a designated franchise area; and

“(B) may satisfy the requirements of this subsection through the use of an alternative technology that provides comparable content, service, and functionality.

“(5) LIMITATIONS.—Notwithstanding any provision of this subsection, a State Commission has the authority—

“(A) to make the determination regarding the comparability of the technology and the service provided under paragraph (4); and

“(B) to monitor the deployment of cable services, video services, or alternate technology.

“(m) COMPLIANCE.—

“(1) COURT ORDER.—

“(A) IN GENERAL.—If a holder of a state-issued certificate of franchise authority is found by a court of competent jurisdiction to be in noncompliance with any requirement of this section, the court shall order such holder, within a specified reasonable period of time, to cure such noncompliance.

“(B) FAILURE TO COMPLY.—If a holder of a state-issued certificate of franchise authority
fails to comply with any court order issued under subparagraph (A) such holder shall be subject to such penalties as the court shall reasonably impose, including revocation of the state-issued certificate of franchise authority granted under this section.

“(2) PARTIES.—A municipality within which a holder of a state-issued certificate of franchise authority offers cable service or video service shall be an appropriate party in any civil action brought under this section.

“(n) RULES OF CONSTRUCTION.—Nothing in this section shall be interpreted or construed—

“(1) to prevent a voice provider, cable service provider, video service provider, or municipality from—

“(A) seeking clarification of any right or obligation that such voice provider, cable service provider, video service provider, or municipality may be entitled to under any other Federal law; or

“(B) exercising any right or authority under any other Federal or State law; or

“(2) to limit the ability of a municipality under existing law to receive compensation for use of the
public rights-of-way from any entity determined not
to be subject to all or part of this section, including
any provider of Internet protocol cable or video serv-
ices, unless such payments are expressly prohibited
by other Federal law.

“(o) COMMISSION TO ACT IF STATE WILL NOT.—
If a State Commission fails to carry out any of its respons-
sibilities under this section, the Commission shall—

“(1) issue an order preempting the authority of
the State Commission to carry out such responsibil-
ities; and

“(2) assume exclusive authority to carry out
such responsibilities.

“(p) DEFINITIONS.—In this section, the following
definitions shall apply:

“(1) ACTUAL INCREMENTAL COST.—The term
‘actual incremental cost’ means only current out-of-
pocket expenses for labor, equipment repair, equip-
ment replacement, and tax expenses directly associ-
ated with the labor or the equipment of a cable or
video service provider that is necessarily and directly
used to provide what were, under a superseded fran-
chise, in-kind services, exclusive of any profit or
overhead such as depreciation, amortization, or ad-
ministrative expense.
“(2) Cable Service.—Except as otherwise provided in this section, the term ‘cable service’ has the same meaning as in section 602.

“(3) Cable Service Provider.—The term ‘cable service provider’ means any person who provides cable service.

“(4) Communications Network.—The term ‘communications network’ means a component or facility that is—

“(A) wholly or partly, physically located within a public right-of-way; and

“(B) used to provide video programming, cable, voice, or data services.

“(5) Franchise.—The term ‘franchise’ means an initial authorization, or renewal of an authorization, issued by a franchising authority, regardless of whether such 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) Gross Revenues.—

“(A) In General.—The term ‘gross revenues’—
“(i) means all consideration of any kind or nature including cash, credits, property, and in-kind contributions (services or goods) derived by a holder of a state-issued certificate of franchise authority from the operation by such holder of the network of such holder to provide cable service or video service within a municipality; and

“(ii) includes all consideration paid to a holder of a state-issued certificate of franchise authority and the affiliates of such holder (to the extent either is acting as a provider of a cable service or video service as authorized by this section), including—

“(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 section that is passed through and paid by
subscribers (including the franchise fee set forth in this section); and

“(III) compensation received by the holder of a state-issued certificate of franchise authority or the affiliates of such holder 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 (E)(v);

“(B) COMPENSATION ARRANGEMENTS.—

“(i) IN GENERAL.—The term ‘gross revenue’ also includes a pro rata portion of all revenue derived by a holder of a state-issued certificate of franchise authority or the affiliates of such holder 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 (E)(iii).

“(ii) Allocation.—Any allocation
made under clause (i) shall be based on
the number of subscribers in a munici-
pality divided by the total number of sub-
scribers in relation to the relevant regional
or national compensation arrangement.

“(C) Advertising commissions.—For
purposes of this paragraph, advertising commis-
sions paid to third parties shall not be netted
against advertising revenue included in gross
revenue.

“(D) Revenue from an affiliate.—
“(i) In general.—Revenue of an af-
iliate of a holder of a state-issued certifi-
cate of franchise authority derived from
the affiliate’s provision of cable service or
video service shall be gross revenue to the
extent the treatment of such revenue as
revenue of the affiliate and not of a holder
of a state-issued certificate of franchise au-

thority has the effect (whether intentional or unintentional) of evading the payment of fees which would otherwise be paid to a municipality.

“(ii) LIMITATION.—In no event shall revenue of an affiliate be gross revenue to a holder of a state-issued certificate of franchise authority if such revenue is otherwise subject to fees to be paid to a mu-

nicipality.

“(E) EXCEPTIONS.—The term ‘gross reve-

nues’ 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 sup-

plying goods or services used by a holder of a state-issued certificate of franchise au-

thority to provide cable service or video service;

“(iii) refunds, rebates, or discounts made to subscribers, leased access pro-

viders, advertisers, or a municipality;
“(iv) any revenues from services classified as non cable service or non video service under any other Federal law, including—

“(I) revenue received from telecommunications services;

“(II) revenue received from information services (but not excluding cable services or video services); and

“(III) any other revenues attributed by a holder of a state-issued certificate of franchise authority to non cable service or non video service in accordance with any rules, regulations, standards, or orders of the Commission;

“(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 a 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 fees under this section from the purchase customer;

“(vii) the provision of cable services or video services to customers at no charge, as required or allowed by this section, including the provision of cable services or video services to—

“(I) public institutions;

“(II) public schools; or

“(III) other governmental entities;

“(viii) any tax of general applicability—

“(I) imposed upon a holder of a state-issued certificate of franchise authority or upon subscribers by a city, State, Federal, or any other governmental entity; and
“(II) required to be collected by a holder of a state-issued certificate of franchise authority and remitted to the taxing entity (including sales and use tax, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes, and fees not imposed by this section);

“(ix) any forgone revenue from a 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 employees of the holder of a state-issued certificate of franchise authority, to the municipality, public institutions, or other institutions as allowed in this section, if, however, the holder of a state-issued certificate of franchise authority chooses not to receive such foregone revenue in exchange for trades, barter, services, or other items of value such foregone revenue shall be included in gross revenue;

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

“(xi) directory or Internet advertising
revenue, including revenue derived from—

“(I) yellow pages;
“(II) white pages;
“(III) banner advertisement; and
“(IV) electronic publishing; and

“(xii) reimbursement by programmers
of marketing costs incurred by a holder of
a state-issued franchise for the introduc-
tion of new programming that exceeds the
actual costs of such programming.

“(F) Rule of Construction.—For pur-
poses of this paragraph, a provider’s network
consists solely of the optical spectrum wave-
lengths, 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 a
municipality as designated by the provider in its
franchise.

“(7) Incumbent Cable Service Provider.—
The term ‘incumbent cable service provider’ means
the cable service provider serving the largest number
of cable subscribers in a particular local franchise
area on the date of enactment of the Franchise Re-
form Act of 2006.

“(8) PUBLIC RIGHT-OF-WAY.—The term ‘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 mu-
unicipality has an interest.

“(9) VIDEO PROGRAMMING.—The term ‘video
programming’ means programming provided by, or
generally considered comparable to programming
provided by, a television broadcast station, as set
forth in section 602.

“(10) VIDEO SERVICE.—The term ‘video serv-
ice’—

“(A) 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; and

“(B) does not include any video service
provided by a commercial mobile service pro-
vider.
“(11) VIDEO SERVICE PROVIDER.—The term ‘video service provider’—

“(A) 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; and

“(B) does not include a cable service provider.”.