

1 **STATE FRANCHISING AUTHORITY FOR**
2 **VIDEO SERVICES**

3 2007 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Curtis S. Bramble**

6 House Sponsor: Michael E. Noel

8 **LONG TITLE**

9 **General Description:**

10 This bill creates a mechanism for the granting of a cable or video franchise by the
11 Department of Commerce.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines terms;
- 15 ▶ allows the Department of Commerce to grant a franchise for cable or video service;
- 16 ▶ addresses who may be granted a franchise by the department;
- 17 ▶ requires a state franchisee to provide public, education, and government access;
- 18 ▶ addresses advertising by competitive cable or video service providers;
- 19 ▶ prohibits discrimination by state franchisees based on income;
- 20 ▶ addresses the powers of and limitations on local governments with respect to state

21 franchisees;

- 22 ▶ provides for enforcement; and
- 23 ▶ addresses other related laws.

24 **Monies Appropriated in this Bill:**

25 None

26 **Other Special Clauses:**

27 This bill provides a severability clause.



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **10-8-14**, as last amended by Chapter 83, Laws of Utah 2001

31 **17-50-306**, as renumbered and amended by Chapter 133, Laws of Utah 2000

32 ENACTS:

33 **13-46-101**, Utah Code Annotated 1953

34 **13-46-102**, Utah Code Annotated 1953

35 **13-46-201**, Utah Code Annotated 1953

36 **13-46-202**, Utah Code Annotated 1953

37 **13-46-203**, Utah Code Annotated 1953

38 **13-46-204**, Utah Code Annotated 1953

39 **13-46-301**, Utah Code Annotated 1953

40 **13-46-302**, Utah Code Annotated 1953

41 **13-46-303**, Utah Code Annotated 1953



43 *Be it enacted by the Legislature of the state of Utah:*

44 Section 1. Section **10-8-14** is amended to read:

45 **10-8-14. Water, sewer, gas, electricity, and public transportation -- Service**
46 **beyond city limits -- Retainage -- Cable television and public telecommunications**
47 **services.**

48 (1) A city may:

49 (a) construct, maintain, and operate waterworks, sewer collection, sewer treatment
50 systems, gas works, electric light works, telecommunications lines, cable television lines, or
51 public transportation systems;

52 (b) authorize the construction, maintenance and operation of the works or systems
53 listed in Subsection (1)(a) by others;

54 (c) purchase or lease the works or systems listed in Subsection (1)(a) from any person
55 or corporation; and

56 (d) sell and deliver the surplus product or service capacity of any works or system
57 listed in Subsection (1)(a), not required by the city or the city's inhabitants, to others beyond the
58 limits of the city, except the sale and delivery of cable television services or public

59 telecommunications services is governed by Subsection (3).

60 (2) If any payment on a contract with a private person, firm, or corporation to construct
61 waterworks, sewer collection, sewer treatment systems, gas works, electric light works,
62 telecommunications lines, cable television lines, or public transportation systems is retained or
63 withheld, it shall be retained or withheld and released as provided in Section 13-8-5.

64 (3) A city's actions under this section related to works or systems involving public
65 telecommunications services or cable television services are subject to the requirements of
66 Chapter 18, Municipal Cable Television and Public Telecommunications Services Act.

67 (4) A city may not issue a franchise for the provision of cable service or video service,
68 or regulate the provision of cable service or video service, except to the extent allowed by Title
69 13, Chapter 46, State Video Franchise Act.

70 Section 2. Section **13-46-101** is enacted to read:

71 **CHAPTER 46. STATE VIDEO FRANCHISE ACT**

72 **Part 1. General Provisions**

73 **13-46-101. Title.**

74 This chapter is known as the "State Video Franchise Act."

75 Section 3. Section **13-46-102** is enacted to read:

76 **13-46-102. Definitions.**

77 As used in this chapter:

78 (1) (a) Except as provided in Subsection (1)(b), "cable operator" is as defined in 47
79 U.S.C. Sec. 522.

80 (b) "Cable operator" does not include a competitive video service provider.

81 (2) "Cable service" is as defined in 47 U.S.C. Sec. 522.

82 (3) (a) Except as provided in Subsection (1)(b), "cable system" is as defined in 47
83 U.S.C. Sec. 522.

84 (b) "Cable system" does not include the facilities of a competitive video service
85 provider.

86 (4) "Competitive cable service provider" means a person authorized by this chapter to
87 provide cable service over a cable system, other than the incumbent cable operator providing
88 service in the area served.

89 (5) (a) "Competitive video service provider" means a person authorized by this chapter

90 to provide video service.

91 (b) "Competitive video service provider" does not include a cable operator.

92 (6) "Department" means the Department of Commerce created in Section 13-1-2.

93 (7) "Franchise" means an initial authorization or renewal of an authorization that
94 allows the construction and operation of a cable system or a video service provider's system in
95 a public right-of-way, whether the authorization is termed a franchise, license, permit, or
96 otherwise.

97 (8) (a) "Gross revenues" means all consideration of any kind or nature, including cash,
98 credits, property, and in-kind contributions received by a cable service provider or video
99 service provider from subscribers for the provision of cable service or video service within a
100 local government's jurisdiction.

101 (b) "Gross revenues" shall be computed in accordance with generally accepted
102 accounting principles and includes:

103 (i) recurring charges for cable service or video service;

104 (ii) event-based charges for cable service or video service, including charges for:

105 (A) pay-per-view; and

106 (B) video-on-demand;

107 (iii) rental of set top boxes and other cable service or video service equipment;

108 (iv) service charges related to the provision of cable service or video service, including
109 charges for:

110 (A) activation;

111 (B) installation; and

112 (C) repair; and

113 (v) administrative charges related to the provision of cable service or video service,

114 including charges for:

115 (A) service order; and

116 (B) service termination.

117 (c) "Gross revenues" does not include:

118 (i) revenues not actually received, even if billed, such as bad debts;

119 (ii) revenues received by an affiliate or other person in exchange for supplying goods

120 or services used by the cable service provider or video service provider to provide cable service

- 121 or video service;
- 122 (iii) refunds, rebates, or discounts made to a subscriber, leased access provider,
- 123 advertiser, or any local government;
- 124 (iv) revenues from services not classified as cable service or video service, including
- 125 revenue received:
- 126 (A) from telecommunications services;
- 127 (B) from information services;
- 128 (C) in connection with advertising;
- 129 (D) from home shopping services; or
- 130 (E) for services not attributable to the cable service or video service in accordance with
- 131 any applicable law, regulation, or rule;
- 132 (v) revenue paid by subscribers to home shopping programmers directly from the sale
- 133 of merchandise through any home shopping channel offered as part of the cable service or
- 134 video service;
- 135 (vi) the sale of cable service or video service for resale in which the purchaser is
- 136 required to collect the fee authorized by Section 13-46-301;
- 137 (vii) any tax or fee of general applicability imposed on the cable service or video
- 138 service provider or its subscriber by a local government, the state, or the federal government
- 139 that is required to be collected by the cable service or video service provider and remitted to the
- 140 taxing entity, including:
- 141 (A) sales or use tax;
- 142 (B) gross receipts tax;
- 143 (C) excise tax;
- 144 (D) utility users tax;
- 145 (E) any fee charged under Section 13-46-301; and
- 146 (F) any other similar tax or fee;
- 147 (viii) the provision of cable service or video service to public institutions, public
- 148 schools, or governmental entities at no charge;
- 149 (ix) any foregone revenue from the provision of free or reduced-cost cable service or
- 150 video service to any person;
- 151 (x) sales of capital assets;

152 (xi) sales of surplus equipment;

153 (xii) reimbursement by programmers of marketing costs incurred by the cable service
154 provider or video service provider for the introduction or promotion of new programming;

155 (xiii) directory or Internet advertising revenue, including yellow page, white page, and
156 banner advertising and electronic publishing; and

157 (xiv) copyright fees paid to the United States Copyright Office.

158 (9) "Incumbent cable operator" means the cable operator serving the largest number of
159 cable television subscribers within the jurisdiction of a local government on January 1, 2007.

160 (10) "Local government" means any:

161 (a) county;

162 (b) city or town, as defined in Section 10-1-104; or

163 (c) political subdivision of the state.

164 (11) "PEG" means public, education, and government noncommercial programming
165 provided by a local government for transmission by a cable or video service provider.

166 (12) "Public right-of-way" means the area on, below, or above a public roadway,
167 highway, street, sidewalk, alley, or waterway, or a utility easement dedicated for compatible
168 uses.

169 (13) "Video programming" is as defined in 47 U.S.C. Sec. 522.

170 (14) (a) Except as provided in Subsection (14)(b), "video service" means video
171 programming service provided through wireline facilities located at least in part in a public
172 right-of-way regardless of delivery technology, including internet protocol technology.

173 (b) "Video service" does not include:

174 (i) video programming provided by a commercial mobile service provider as defined in
175 47 U.S.C. Sec. 332;

176 (ii) video programming provided as part of, and through, a service that enables users to
177 access content, information, electronic mail, or any other service offered over the public
178 Internet; and

179 (iii) cable service provided by a competitive cable service provider.

180 Section 4. Section **13-46-201** is enacted to read:

181 **Part 2. State Video Franchise**

182 **13-46-201. State video franchise.**

183 (1) A competitive cable service provider or competitive video service provider seeking
184 to provide cable service or video service shall file an application for a franchise with the
185 department in the manner provided by this section.

186 (2) An application for a franchise for a competitive cable service provider or
187 competitive video service provider consists of an affidavit submitted by the competitive cable
188 service provider or competitive video service provider, signed by an officer or general partner,
189 containing the following:

190 (a) an affirmation that the applicant will comply with all applicable federal and state
191 laws, regulations, and rules;

192 (b) a written description of the area to be served by the applicant; and

193 (c) identification of the location of the principal place of business and the names of the
194 applicant's executive officers.

195 (3) The written description of the area to be served under Subsection (2)(b):

196 (a) shall identify each local government with jurisdiction over any portion of the area
197 to be served; and

198 (b) may include, as a supplement, a map or other graphic representation of the area to
199 be served.

200 (4) The department shall grant a franchise to a competitive cable service provider or a
201 competitive video service provider to provide cable service or video service no later than 30
202 days after the day on which the department receives a completed application submitted by the
203 competitive cable service provider or competitive video service provider.

204 (5) The holder of a franchise granted under this chapter may amend the franchise to
205 include an additional area to be served by filing a notice with the department and with any
206 affected local government at least ten days before offering service in the additional area.

207 (6) A franchise under this chapter may be granted for an area including all or part of
208 any area within the jurisdiction of a local government.

209 (7) (a) A franchise granted under this chapter constitutes a franchise for purposes of 47
210 U.S.C. Sec. 541.

211 (b) To the extent required for purposes of 47 U.S.C. Secs. 521 through 561, Utah is the
212 exclusive franchising authority for a competitive cable service provider or a competitive video
213 service provider.

214 (8) (a) A cable operator with a franchise agreement with a local government as of April
215 30, 2007 may be granted a franchise under this chapter only upon the expiration of the existing
216 franchise with a local government.

217 (b) A cable operator subject to Subsection (8)(a) may apply for a franchise under this
218 chapter in the same manner as a competitive cable service provider or a competitive video
219 service provider.

220 Section 5. Section **13-46-202** is enacted to read:

221 **13-46-202. Public, education, and government programming -- Interconnection.**

222 (1) Within 180 days after the day on which any request is received from a local
223 government with jurisdiction over an area served by a competitive cable service provider or a
224 competitive video service provider, the competitive cable service provider or a competitive
225 video service provider shall designate capacity on its system or network to allow the provision
226 of a comparable number of channels or capacity of PEG access as that offered by the
227 incumbent cable operator.

228 (2) A competitive cable service provider or a competitive video service provider is not
229 responsible for originating any content to be provided using PEG access.

230 (3) No cable operator or video service provider, including an incumbent cable operator,
231 may place a logo, advertisement, promotion, or any other marketing material that would have
232 the effect of favoring the cable operator or video service provider over any other on any
233 channel space designated for PEG access under Subsection (1).

234 (4) A local government providing content to a competitive cable service provider or a
235 competitive video service provider for transmission on channels designated for PEG access
236 shall submit the content in a manner and format that is capable of being accepted and
237 transmitted by the competitive cable service provider or a competitive video service provider
238 without additional alteration or change in the content.

239 (5) (a) To the extent technically feasible, a competitive cable service provider or a
240 competitive video service provider and an incumbent cable operator shall use reasonable
241 efforts to interconnect their cable or video systems to provide PEG access.

242 (b) Interconnection under Subsection (5)(a) may be accomplished by:

243 (i) direct cable;

244 (ii) microwave link;

245 (iii) satellite; or
 246 (iv) other reasonable method of interconnection.

247 (c) A competitive cable service provider or a competitive video service provider and an
 248 incumbent cable operator shall negotiate for interconnection agreements in good faith and may
 249 not unreasonably withhold interconnection of PEG channels under Subsection (5)(a).

250 Section 6. Section **13-46-203** is enacted to read:

251 **13-46-203. Advertising by competitive cable or video service provider.**

252 (1) An incumbent cable operator may not refuse to carry advertising requested by a
 253 competitive cable service provider or a competitive video service provider on local advertising
 254 space owned and controlled by the incumbent cable operator.

255 (2) An incumbent cable operator shall make 10% of all local advertising space owned
 256 and controlled by the incumbent cable operator available to competitive cable service providers
 257 or competitive video service providers.

258 Section 7. Section **13-46-204** is enacted to read:

259 **13-46-204. Discrimination prohibited -- Service in low-income areas.**

260 A cable service provider or video service provider operating under a franchise granted
 261 under this chapter may not deny access to service to any group of potential residential
 262 subscribers because of the income of the residents in the local area in which the group resides.

263 Section 8. Section **13-46-301** is enacted to read:

264 **Part 3. Miscellaneous Provisions**

265 **13-46-301. Fee.**

266 (1) A competitive cable service provider or a competitive video service provider
 267 operating under a franchise granted in accordance with this chapter shall notify each local
 268 government with jurisdiction over an area served by the competitive cable service provider or
 269 competitive video service provider ten days before beginning service in that area.

270 (2) A local government with jurisdiction over an area served by a competitive cable
 271 service provider or a competitive video service provider operating under a franchise granted in
 272 accordance with this chapter may require the competitive cable service provider or competitive
 273 video service provider to pay a fee to the local government upon the local government's written
 274 request at least 60 days in advance of the fee's due date verifying:

275 (a) the amount of the fee as a percentage of gross revenues to be paid by the

276 competitive cable service provider or competitive video service provider; and

277 (b) the amount of the fee as a percentage of gross revenues paid to the local
278 government by the incumbent cable operator.

279 (3) A fee required by a local government under Subsection (2) is due on a quarterly
280 basis, 45 days after the close of each calendar quarter.

281 (4) The fee allowed by this section shall be calculated as a percentage of the
282 competitive cable service provider's or competitive video service provider's gross revenues.

283 (5) The fee allowed by this section may not exceed 5% of the competitive cable service
284 provider's or competitive video service provider's gross revenues, or a percentage of gross
285 revenues identical to the percentage of gross revenues paid by an incumbent cable operator,
286 whichever is less.

287 (6) (a) At the request of a local government with jurisdiction over an area served by a
288 competitive cable service provider or a competitive video service provider operating under a
289 franchise granted in accordance with this chapter, but no more than once per calendar year, the
290 department may audit the competitive cable service provider's or competitive video service
291 provider's calculation of the fee imposed by the local government under this section.

292 (b) Each party involved in an audit under Subsection (6)(a) shall bear its own expenses
293 associated with the audit.

294 (7) A competitive cable service provider or a competitive video service provider may
295 identify and collect the fee imposed by a local government under this section as a separate line
296 item on each subscriber's regular bill.

297 Section 9. Section **13-46-302** is enacted to read:

298 **13-46-302. Local government.**

299 (1) A local government may not:

300 (a) require a competitive cable service provider or a competitive video service provider
301 to obtain a franchise in addition to the franchise granted in accordance with this chapter;

302 (b) impose any fee not authorized by this chapter on a competitive cable service
303 provider or a competitive video service provider;

304 (c) require a competitive cable service provider or a competitive video service provider
305 to meet any condition not authorized by this chapter, including:

306 (i) regulation of rates charged;

307 (ii) build-out requirements;
 308 (iii) deploying any facilities or equipment; and
 309 (iv) requiring the approval of the local government's voters before providing service;
 310 (d) discriminate against the holder of a franchise granted under this chapter, including

311 in:

312 (i) authorizing the placement of a communications network in a public right-of-way;
 313 (ii) access to a building; or
 314 (iii) establishing the terms or conditions for a municipal utility pole attachment; or

315 (e) charge a permit fee:

316 (i) if the competitive cable service provider or competitive video service provider has
 317 already paid a permit fee of any kind in connection with the same activity for which a new
 318 permit fee is proposed to be charged; or

319 (ii) for general revenue purposes.

320 (2) A local government shall allow the holder of a franchise granted under this chapter
 321 to install, construct, and maintain a communications network within any public right-of-way,
 322 including providing open and competitively neutral access to the public right-of-way.

323 (3) Notwithstanding Subsection (1) and Section 13-46-301, a local government may
 324 impose:

325 (a) a fee for any permit required for construction of facilities or a similar permit only to
 326 the extent:

327 (i) the local government imposes an equivalent permit fee on any incumbent cable
 328 operator; and

329 (ii) the permit fee is not greater than the actual, direct costs incurred by the local
 330 government for issuing the permit; and

331 (b) a PEG fee per subscriber no greater than the PEG fee per subscriber charged the
 332 incumbent cable operator.

333 Section 10. Section **13-46-303** is enacted to read:

334 **13-46-303. Enforcement -- Relationship to other law.**

335 (1) Before any action is brought against a cable service provider or video service
 336 provider under this chapter, the person bringing the action shall provide written notice to the
 337 cable service provider or video service provider of the claimed violation and provide the cable

338 service provider or video service provider a reasonable opportunity to cure the claimed
339 violation.

340 (2) Any action brought against a cable service provider or video service provider under
341 this chapter may be brought in the district court for any county in which any portion of an area
342 served by the cable service provider or video service provider is located.

343 (3) (a) An action to enforce this chapter's provisions with respect to a franchise granted
344 under this chapter may be brought by the department only.

345 (b) An action by the department under Subsection (3)(a) is instituted by the filing of a
346 complaint in an appropriate district court under Subsection (2).

347 (4) A cable service provider or video service provider may enforce its rights under this
348 chapter with respect to an action by a local government by filing a complaint in the district
349 court for any county in which the local government is located.

350 (5) Except as otherwise provided in this chapter, a competitive cable service provider
351 or a competitive video service provider has the same rights under state law as an incumbent
352 cable operator or other provider of video programming.

353 (6) This chapter is intended to be consistent with the Federal Cable Act, 47 U.S.C. Sec.
354 521 et seq.

355 (7) Nothing in this chapter may be interpreted to prevent a competitive cable service
356 provider, a competitive video service provider, a cable operator, or a local government from:

357 (a) seeking clarification of its rights and obligations under federal law; or

358 (b) exercising any right or authority under federal or state law.

359 Section 11. Section **17-50-306** is amended to read:

360 **17-50-306. Granting franchises over public roads -- Limitation.**

361 (1) A county may grant franchises along and over the public roads and highways for all
362 lawful purposes, upon such terms, conditions, and restrictions as in the judgment of the county
363 legislative body are necessary and proper, to be exercised in such manner as to present the least
364 possible obstruction and inconvenience to the traveling public.

365 (2) A franchise under Subsection (1) may not be granted for a period longer than 50
366 years.

367 (3) A county may not issue a franchise for the provision of cable service or video
368 service or regulate the provision of cable service or video service except to the extent allowed

369 by Title 13, Chapter 46, State Video Franchise Act.

370 Section 12. **Severability clause.**

371 If any provision of this bill, or the application of any provision to any person or

372 circumstance, is held invalid, the remainder of this bill shall be given effect without the invalid

373 provision or application.

Legislative Review Note

as of 2-12-07 8:48 AM

Office of Legislative Research and General Counsel

S.B. 209 - State Franchising Authority for Video Services

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
