

Competitive Cable & Video Services Act of 2008

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§ 7-59-101. Short title

This part shall be known and may be cited as the “Cable Television Act of 1977.”

§ 7-59-102. Franchises; issuance by municipality or county; when franchise not required

(a)(1) For purposes of this part, unless the context otherwise requires:

(A) “Cable service provider” has the same meaning as defined in [§ 7-59-303](#);

(B) “Cable service” has the same meaning as defined in [§ 7-59-303](#);

(C) “Department” has the same meaning as defined in [§ 7-59-303](#);

(D) “Video service” has the same meaning as defined in [§ 7-59-303](#); and

(E) “Video service provider” has the same meaning as defined in [§ 7-59-303](#).

(2) Except with respect to a cable or video service provider that is issued a state-issued certificate of franchise authority by the department pursuant to part 3 of this chapter, the governing body of each municipality in each county in this state has the power and authority to regulate the operation of any cable television company, cable service provider or video service provider that serves customers within its territorial limits, by the issuance of franchise licenses after public notice and showing the terms of any proposed franchise agreement and public initiation for fees and not inconsistent with any rules and regulations of the federal communications commission or [§ 7-59-304](#).

(b) Cable television systems shall not serve customers in any unincorporated area without obtaining a franchise from the county or the department, unless the systems were serving those areas under franchises applied for at least ninety (90) days prior to May 18, 1977.

(c) A county shall not issue a franchise that is within any municipality.

(d) A franchise shall not be required for line extensions of a cable television system that do not serve any customers in the unincorporated area through which such lines are extended, or where such line extensions are constructed upon public lands or with easements not obtained from any public body.

(e) The governing body of a county shall not deny any cable television system a franchise for any area in which such cable television system was in place on May 18, 1977, or held a certificate of compliance from the federal communications commission.

(f) Franchises issued by a municipality or a county shall not be inconsistent with the rules and regulations of the federal communications commission.

(g) Nothing in this part shall be construed as prohibiting any county or municipal government from withdrawing a locally issued franchise from a cable television company, cable service provider or

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video service provider for cause.

(h) A franchise shall not be required of a cable television system to erect any tower or transmission cable in an unincorporated area for the purpose of providing service for an incorporated area.

(i) Any municipal electric system permitted to operate under the authority of chapter 52, part 6 of this title, before delivering any cable services, two-way video transmission or video programming shall obtain a franchise from the appropriate municipal governing body or county governing body.

(j) The franchising authority shall not employ terms more favorable or less burdensome upon a municipal electric system operating under the authority of chapter 52, part 6 of this title than those imposed by the franchising authority upon any private provider's providing the same services within the franchising authority's jurisdiction. The franchising authority shall not impose or enforce any local franchise requirement on any such private provider that is not also made applicable to such a municipal electric system, nor shall the franchising authority discriminate between such providers.

(k) Nothing contained in this section shall be interpreted to limit the authority of a municipality or county to collect franchise fees, control and regulate its streets and public ways, or enforce its powers to provide for the public health, safety, and welfare.

§ 7-59-103. Cables; agreements for attachment to existing poles or underground burial; permits; landowner consent

Any cable television company, cable service provider or video service provider incorporated under the laws of this state and any other such company incorporated or operating under the laws of any other state, upon complying with the laws of this state regulating the doing of business in this state by foreign corporations or foreign businesses, may, upon approval of the governing body of the city, county or department construct, maintain and operate its cable over or beneath any of the public lands of this state, but not including the "freeway system," which is defined as a fully-controlled access facility, or over or beneath or along any of the highways or public roads of the state or over or beneath any of the waters of the state. The cable television company, cable service provider or video service provider shall, unless previously covered by court decree, where possible and practical, enter into an agreement with the telephone company or electric power distribution company whereby the cable television company, cable or video service provider has a right to attach its cable to the poles owned by the telephone company or electric power company or to bury its cables beneath the ground; provided, that the cable is constructed so as not to endanger the safety of persons or to interfere with the use of the public lands, highways or public roads or the navigation of such waters. The agency charged with the maintenance of the public lands, highways, or along the public lands, highways, public roads or waters of the state shall provide that the cable television company, cable or video service provider obtain a permit prior to placing its cables over, under or along the public lands, highways, public roads or waters. If both electrical and telephone facilities in an area are underground, then the cable television, cable service or video service lines in that area shall also be placed underground. If the cable is located in such a manner so as to contribute to interference with the right of ingress or egress to land that is subject to any easement, the cable television company, cable service or video service provider shall obtain

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the consent of the landowner, the landowner's heirs or assigns from which the original easement was obtained.

§ 7-59-104. Moving or removal costs; damage to public highways or roads

Whenever the agency charged with the maintenance of such public lands, highways or public roads or waters of the state deems it necessary to move or remove the poles or underground conduit of the telephone company or electric power distribution company, the cable television company, cable service or video service provider and its apparatus shall be moved or removed at the cost of the cable television company, cable or video service provider. Whenever damage results to the public highways or roads as a result of operation by a cable television company, cable service or video service provider, the company or provider shall repair the highway or road according to department standards and all costs shall be borne by the cable television company, cable service or video service provider.

§ 7-59-105. Private property; compensation; consent to installation

(a) No cable television company, cable service provider or video service provider may damage private property on which the utility pole is located without just compensation to the landowner for the damage suffered to the landowner's property.

(b) No cable television company, cable service provider or video service provider may install underground wires or underground equipment on private property without the written consent of the property owner. A violation of this subsection (b) is a Class A misdemeanor.

§ 7-59-106. Operation under grandfather clauses; fees

Any cable television company that shall receive the benefits of operating under the grandfather clauses contained in this part shall pay the county governing body or municipality the same fees as would be charged to a new franchise company by the county or municipality. These fees shall not be inconsistent with the requirements and regulations of the federal communications commission.

§ 7-59-107. Customer complaints; receiving service; recordkeeping

Any cable television company, cable service provider or video service provider locally franchised and operating in this state shall maintain a complete service for the purpose of receiving customer complaints concerning service or any other matter relating to its operations. These companies shall keep written records of complaints received, including the name of the complaining party, the nature of the complaint, and the disposition of the complaint. The records shall be subject to inspection by the governing body granting the franchise.

§ 7-59-108. Unauthorized connections; tampering; penalties

(a) It is unlawful for any person, firm, or corporation to make or use any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of a franchised cable television system for the purpose of enabling such person, firm, or corporation, or others, to receive or use any

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television signal, radio signal, picture, program or sound, without payment to the owner of the system.

(b) It is unlawful for any person, without the consent of the franchise owner, to willfully transfer with, remove, or injure in any manner, cables, wires, or equipment used for the distribution of television signals, radio signals, pictures, programs or sound.

(c) Any person who willfully violates this section commits a Class C misdemeanor.

(d) Nothing in this section shall be construed to apply to licensed and certified electrical contractors while performing usual and ordinary service in accordance with recognized standards.

§ 7-59-109. Repealed by 2004 Pub.Acts, c. 770, § 2, eff. July 1, 2004

§ 7-59-201. Definitions

As used in this part, unless the context otherwise requires:

(1) “Cable service” means:

(A) The one-way transmission to subscribers of video programming or other programming service; and

(B) Subscriber interaction, if any, that is required for the selection of such video programming or other programming service;

(2) “Cable system” means a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service that includes video programming and that is provided to multiple subscribers within a community; but “cable system” does not include:

(A) A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;

(B) A facility that serves only subscribers in one (1) or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities use any public right-of-way;

(C) A facility of a common carrier, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; or

(D) Any facilities of any electric utility used solely for operating its electric utility system;

(3) “Franchise” means an initial authorization or renewal of an authorization issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, that authorizes the construction or operation of a cable system;

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(4) “Franchising authority” means any governmental entity empowered by federal, state, or local law to grant a franchise;

(5) “Person” means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity; and

(6) “Video programming” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station or cable system.

§ 7-59-202. Repealed by 2008 Pub.Acts, c. 932, § 25, eff. July 1, 2008

§ 7-59-203. Franchise terms and conditions; no favoritism

No municipality or county shall grant any overlapping franchises for cable or video service within its jurisdiction on terms or conditions more favorable or less burdensome than those in any existing cable or video franchise within the municipality or county.

§ 7-59-204. Repealed by 2008 Pub.Acts, c. 932, § 27, eff. July 1, 2008

§ 7-59-205. Repealed by 2008 Pub.Acts, c. 932, § 28, eff. July 1, 2008

§ 7-59-206. Previously existing franchises

All cable service franchises in existence on July 1, 1988, shall remain in full force and effect according to their terms.

§ 7-59-207. Franchise renewals unaffected

Nothing in this part shall be construed to alter or amend the process or procedure for renewal of franchises in existence on July 1, 1988.

§ 7-59-208. Previously filed franchise requests

This part shall not affect any franchise request filed in an area with an existing franchise prior to July 1, 1988.

§ 7-59-301. Short title

This part shall be known and may be cited as the “Competitive Cable and Video Services Act”.

§ 7-59-302. Fair franchising process; application of part; limited role of the Tennessee regulatory authority

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This part creates a fair franchising process for cable and video services and codifies the terms of the franchise in state law. This part does not alter existing state law regarding local control of public rights-of-way or the police powers of local government. This part does not alter or restrict the right of any municipality or county to impose ad valorem taxes, sales taxes, or other taxes of general applicability. This part does not alter or restrict in any manner the application of the Broadband Business Certainty Act of 2006, compiled in title 65, chapter 5, part 2. This part does not alter in any manner the provisions contained in chapter 52, part 6 of this title. This part does not alter or apply in any manner to wholesale telecommunications access by competitive local exchange carriers. It is the intent of this part to confer a limited role on the Tennessee regulatory authority, referred to in this part as the “department”, which will be ministerial and narrowly construed, except to the extent otherwise specifically provided for in this part, and no rulemaking authority is provided by this part.

§ 7-59-303. Definitions

As used in this part, unless the context otherwise requires:

- (1) “Access” means that a provider is capable of providing cable service or video service at the household address regardless of whether any customer has ordered service or whether the owner or landlord or other responsible person has granted access to the household;
- (2) “Broadband Internet service” means an asymmetrical connection to the Internet from a home computer with an expected download data transfer rate of at least one and one-half megabits per second (1.5 Mbps), or, after January 1, 2012, a data transfer rate equal to the speed that thirty percent (30%) or more of the provider's Internet service subscribers actually purchase, and shall not include direct-to-home satellite service or direct broadcast satellite service;
- (3) “Cable service” has the meaning set forth in [47 U.S.C. § 522\(6\)](#); provided, however, that “cable service” does not include any video programming provided by a commercial mobile service provider as defined in [47 U.S.C. § 332\(d\)](#) or video programming provided as part of, and via, a service that enables end users to access content, information, electronic mail or other services offered over the public Internet;
- (4) “Cable service provider” means a provider of cable service;
- (5) “Cable system” has the meaning set forth in [47 U.S.C. § 522\(7\)](#);
- (6) “Department” means the Tennessee regulatory authority;
- (7) “Days” means calendar days. For purposes of any act to be taken pursuant to this part, if an act is to be taken on a day that falls on a weekend or holiday, then the act shall be required on the next day that is not a weekend or holiday;
- (8) “Franchise” has the meaning set forth in [47 U.S.C. § 522\(9\)](#), and additionally includes the authorization to construct and operate a cable or video service provider's facility within the public rights-of-way used to provide cable or video service;

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(9) “Franchise area” means, with respect to a large telecommunications provider that is a holder of a state-issued certificate of franchise authority, the aggregate geographic area containing its basic local exchange wire-line telephone service areas within the state. “Franchise area”, for all other holders of a state-issued certificate of franchise authority, means the geographical area described in the application for a state-issued certificate of franchise authority within which a holder of a state-issued certificate of franchise authority is seeking authority to deliver cable or video services;

(10) “Franchise authority” means “franchising authority” as set forth in [47 U.S.C. § 522\(10\)](#) or other governmental entity empowered by federal, state, or local law to grant a franchise. With regard to the holder of a state-issued certificate of franchise authority within the areas covered by the certificate, the department is the sole franchising authority. With respect to a franchise agreement with a municipality or county governing authority, that municipality or county is the sole franchising authority within the service area governed by that franchise agreement;

(11) “Gross revenues” means:

(A) With respect to a holder of a state-issued certificate of franchise authority, all revenues received from subscribers in the applicable municipality or unincorporated county area for providing cable or video services, and all revenues received from nonsubscribers in the applicable municipality or unincorporated county area for advertising services and as commissions from home shopping services, as allocated pursuant to subdivision (11)(B); provided, that the advertising or home shopping services are disseminated through cable or video services. Gross revenues shall be determined according to generally accepted accounting principles. “Gross revenues” does not include any:

(i) Tax, surcharge, or governmental fee, including franchise fees; provided, however, that, upon the adoption of a resolution by the governing authority of the municipality or county, and notice of the resolution sent to the department, gross revenues may include the franchise fees; the governing authority of the municipality or county may likewise, by adopting a resolution, rescind such action;

(ii) Revenue not actually received, even if billed, such as bad debt;

(iii) Revenue received by any affiliate or any other person in exchange for supplying goods or services to the service provider;

(iv) Amounts attributable to refunds, rebates, or discounts;

(v) Revenue from services provided over the cable system or video service system that are associated with or classified as non-cable or non-video services under federal law, including, but not limited to, revenues received from providing telecommunications services, information services other than cable or video services, Internet access services, directory or Internet advertising services, including, but not limited to, yellow pages, white pages, banner, and electronic publishing advertising. Where the sale of any such non-cable or non-video service is bundled with the sale of any cable or video service or services and sold for a single non-itemized price, the term “gross revenues” shall include only those revenues that are attributable

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to cable or video services based on the provider's books and records;

(vi) Revenue attributable to financial charges, such as returned check fees, late fees or interest;

(vii) Revenue from the sale or rental of property, except such property the consumer is required to buy or rent exclusively from the service provider;

(viii) Revenues from providing or maintaining an inside wiring plan;

(ix) Revenue from sales for resale with respect to which the purchaser is required to pay a franchise fee, and the purchaser certifies in writing that it will resell the service and pay a franchise fee with respect thereto; and

(x) Amounts attributable to a reimbursement of costs, including, but not limited to, the reimbursements by programmers of marketing costs incurred for the promotion or introduction of video programming; and

(B) With regard to gross revenues attributable to advertising revenues, or video home shopping services, the amount that is allocable to a municipality or unincorporated area of a county is equal to the total amount of a holder of a state-issued certificate of franchise authority's revenue received from the advertising and home shopping services multiplied by the ratio of the number of the provider's subscribers located in the municipality or in the unincorporated area of the county to the total number of the provider's subscribers. The ratio shall be based on the number of the provider's subscribers as of January 1 of the preceding year or more current subscriber count at the provider's discretion, except that, in the first year in which services are provided, the ratio shall be computed as of the earliest practical date;

(12) "Household" means an apartment, a house, a mobile home, or any other structure or part of a structure intended for residential occupancy as separate living quarters;

(13) "Incumbent cable service provider" means any cable service provider who provided cable service in a municipality or in an unincorporated area of a county on July 1, 2008, under a franchise whether or not the franchise had expired on July 1, 2008;

(14) "Large telecommunications provider" means a cable or video service provider using telecommunications facilities to provide cable or video service that, as of January 1, 2008, directly or through any subsidiary or affiliate, had more than one million (1,000,000) telecommunications access lines in this state. The basic local exchange footprint of a large telecommunications provider is that geographic area in which the carrier provides wire-line local telephone exchange service as of January 1, 2008;

(15) "Low-income household" with respect to a large telecommunications provider means a household with an average annual income of less than thirty-five thousand dollars (\$35,000) as of July 1, 2008; provided, that, for determining low-income households, the most recent decennial census estimates of household income shall be adjusted by the consumer price index to estimate annual household incomes in prior years or subsequent years. With respect to all other holders of a state-issued certificate of franchise authority, "low-income household" means, at the option of the holder with respect to each franchise area, either:

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(A) A household meeting the standard provided in this subdivision (15) for large telecommunications providers; or

(B) A household below the estimated median household income within the holder's franchise area according to the most recent decennial census estimates of household income or, to the extent available, more recent estimates from the small area income estimates provided by the United States census bureau;

(16) "Public right-of-way" means the area on, along, below, or above a public roadway, highway, street, sidewalk, alley, bridge or waterway that is not private property;

(17) "Qualified cable operator" means a cable service provider that, on the date that it applies for a state-issued certificate of franchise authority, individually or together with its affiliates or parent company, has at least seven hundred thousand (700,000) cable or video service customers in the United States as determined by data collected and reported by the federal communications commission, referred in this part as the FCC, or determined by information available to the public through a national trade association representing cable operators;

(18) "Video programming" means programming provided by, or generally considered comparable to programming provided by a television broadcast station, as set forth in [47 U.S.C. § 522\(20\)](#);

(19) "Video service" means the provision of video programming through wireline facilities located, at least in part, in the public rights-of-way without regard to delivery technology, including Internet protocol technology or any other technology. "Video service" does not include any video programming provided by a commercial mobile service provider as defined in [47 U.S.C. § 332\(d\)](#) or video programming provided as part of, and via, a service that enables end users to access content, information, electronic mail or other services offered over the public Internet. "Video service" does not include cable service; and

(20) "Video service provider" means a provider of video service.

§ 7-59-304. Franchise options; negotiated agreements; certificate of franchise authority

(a)(1) Any entity, person or joint venture, as authorized under this part, seeking to provide cable or video service over a cable system or video service network facility in this state after July 1, 2008, at the discretion of the cable service provider or video service provider, may elect from among the franchise options as set forth in this section. A cable or video service provider shall not provide cable service or video service without a franchise obtained pursuant to this part, except as in accordance with [§ 7-59-102](#).

(2) A person seeking to provide cable service or video service may elect to negotiate a local cable service or video service franchise agreement with a municipal or county franchise authority and may enter into a negotiated cable television franchise agreement in accordance with Title VI of the Communications Act of 1934, compiled in [47 U.S.C. § 521 et seq.](#), or a video service franchise agreement in accordance with any applicable state or federal law that establishes the terms and conditions for the franchise agreement within the jurisdictional limits of that municipality or county, including parts 1 and 2 of this chapter. A local cable

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service or video service franchise agreement entered into after July 1, 2008, shall remain in force and effect through its expiration date notwithstanding the provision for terminating a local franchise agreement established in subsection (b).

(3) A person seeking to provide cable or video service, including any incumbent cable service provider, may elect to adopt the terms of a negotiated franchise agreement entered into between a cable service provider or video service provider and a municipal or county franchise authority in the service area in which the provider desires to provide service. The municipal or county franchise authority shall be required to enter into any such negotiated franchise agreement upon the same terms and conditions with any requesting provider of cable service or video service. A local cable service or video service franchise agreement that is adopted by a cable service provider or provider of video service after July 1, 2008, shall remain in force and effect through its expiration date notwithstanding the provision for terminating a local franchise agreement established in subsection (b).

(4) A cable or video service provider may elect to file an application with the department for a state-issued certificate of franchise authority for one (1) or more specified service areas in accordance with the procedures set forth in this part.

(5)(A) The state-issued certificate of franchise authority issued by the department is fully transferable to any successor in interest in accordance with the requirements in this subdivision (a)(5). Notice of the transfer shall be provided to the department and to the governing authority of the affected local government at least ten (10) days prior to the consummation of the transaction. No later than forty-five (45) days following the consummation of the transaction, the transferor shall be required to pay any franchise fees or other amounts owed to any municipality or county. No later than ninety (90) days following the consummation of the transaction, the transferee shall apply to the department for a state-issued certificate of franchise authority. The transferee shall have interim authority to provide cable or video service pending the receipt of a state-issued certificate of franchise authority from the department. Notwithstanding this subdivision (a)(5)(A):

(i) Subject to [§ 7-59-305\(d\)](#), if the successor entity already holds a state-issued certificate of franchise authority, it may amend that certificate to add the transferred service area; and

(ii) Any intra-company transfer of a state-issued certificate of franchise authority may be accomplished by providing the notice described in subdivision (a)(5)(A).

(B) Except to the extent permitted by applicable local permitting rules, transfer of a state-issued certificate of franchise authority does not transfer any interest or right under any local public permits for construction or work in public rights-of-way obtained by or in the name of the transferor and in no event shall a transfer of a state-issued certificate of franchise authority provide authority to a transferee to construct, maintain, or conduct any work in a public right-of-way until such time that the transferee obtains the required permits from, or is otherwise in compliance with the permitting requirements of, all applicable governmental authorities.

(b)(1) An incumbent cable service provider or an entity or person providing video service on July 1, 2008,

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under a franchise previously granted by a municipality or county may elect to terminate one (1) or more of its municipal or county franchises at its option and seek a state-issued certificate of franchise authority by filing an application for a state-issued certificate of franchise authority for one (1) or more specified service areas with the department in accordance with the procedures set forth in this part. The municipal or county franchise is terminated on the date the department issues the state-issued certificate of franchise authority and no provision of the terminated local franchise is enforceable thereafter, except that until the date upon which the local franchise would have naturally expired, an incumbent cable service provider or entity or person providing cable or video services under a local franchise agreement that is terminated pursuant to this part shall not reduce or otherwise diminish access to cable or video services of any subscriber as of the date of termination if the subscriber does not have access to cable or video services from another local franchise holder or a holder of a state-issued certificate of franchise authority.

(2) An incumbent cable service provider may elect to continue to operate under one (1) or more local franchises at its option and to apply to the department for a state-issued certificate of franchise authority to continue to operate with respect to one (1) or more other service areas not covered by the local franchises. Any incumbent cable service provider providing service under an expired local franchise, including a local franchise that expires at any time prior to July 1, 2008, shall follow the procedure set forth in [§ 7-59-307\(a\)](#) to obtain either a local or state-issued certificate of franchise authority.

(3)(A) If an incumbent cable service provider or entity or person who chooses to terminate its local franchise agreement to obtain a state-issued certificate of franchise authority as provided in subdivision (b)(1) is providing to a municipality or county an institutional data network funded pursuant to the local franchise agreement, however defined or referenced in the local incumbent franchise, but generally including private line data network capacity for noncommercial purposes that is in existence as of January 1, 2008, and is funded via a line item per subscriber charge, then the incumbent cable service provider shall continue to provide the data network; and a holder of a state-issued certificate of franchise authority serving the municipality or county is required to remit to the affected municipality or county the same per subscriber charge collected by the incumbent cable provider until the natural termination date of the local franchise.

(B) All cable and video service providers, including a holder of a state-issued certificate of franchise authority, may designate that portion of the subscriber's bill attributable to any payment required under this subdivision (b)(3) as a separate item on the bill for recovery of such amount from the subscriber. The fees shall be collected by the cable or video service provider or holder of a state-issued certificate of franchise authority and paid to the municipality or county. The municipality or county shall then remit or otherwise provide credit to the incumbent cable provider in a manner consistent with the local franchise agreement.

(4) For any other institutional data networks in existence and provided by an incumbent cable provider on January 1, 2008, the incumbent cable provider shall continue to provide and fund the institutional network as set forth in its local franchise agreement and may petition the department for an order requiring all cable and video service providers and holders of state-issued certificates of franchise authority whose service area includes the affected municipality or county to contribute to the funding of the institutional network on a per subscriber basis in the municipality or county and to approve the appropriate per subscriber charge. To obtain such an order, the incumbent cable provider shall demonstrate to the department that it had the right

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to recover its costs on a per subscriber basis under its local franchise agreement and shall also demonstrate the reasonable recovery cost, consistent with its local franchise agreement and consistent with applicable federal law, relating to the institutional network. The department shall review and establish the accuracy of the information provided by the incumbent cable provider after notice and an opportunity for any provider or holder who may, under this subdivision (b)(4), be required to contribute, to challenge the information before the department.

§ 7-59-305. Application for certificate of authority; fees; population of service areas

(a) To receive a state-issued certificate of franchise authority, a cable or video service provider shall file an application with the department. A copy of the application shall be provided simultaneously to the governing authority of any affected municipality or county for services provided in unincorporated areas within a county. A parent company may file a single application covering itself and all, or some, of its subsidiaries and affiliates intending to provide cable or video service in the service areas throughout the state as described in subsection (c). The parent company shall include the names of the subsidiaries and affiliates and the service areas each intends to serve on its application to the department. The subsidiary or affiliate actually providing the service in the defined service area shall otherwise be considered the holder of the state-issued certificate of franchise authority under this part.

(b) The department shall impose a fee in accordance with the following schedule:

(1) With respect to applications for a state-issued certificate of franchise authority, the fee shall be based on the population of the service area or areas applied for in accordance with the most recent decennial census as follows:

(A) Up to and including 50,000--	\$500;
(B) Over 50,000 up to and including 100,000--	\$1,000;
(C) Over 100,000 up to and including 500,000--	\$2,000;
(D) Over 500,000 up to and including 1,000,000--	\$5,000;
(E) Over 1,000,000 up to and including 2,000,000--	\$10,000;
(F) Over 2,000,000--	\$15,000.

(2) With respect to amendments, the fee shall be based upon the populations of the service area or areas in

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accordance with the most recent decennial census as follows:

- | | |
|---|----------|
| (A) Up to and including 50,000-- | \$250; |
| (B) Over 50,000 up to and including 1,000,000-- | \$500; |
| (C) Over 1,000,000-- | \$1,000. |

(c) The application for a state-issued certificate of franchise authority shall consist of an affidavit signed by an officer or partner. No other application form or materials shall be required. The affidavit shall provide the following information and affirm:

- (1) That the applicant agrees to comply with all applicable federal and state laws and regulations to the extent that the state laws and regulations are not in conflict with or superseded by this part or other applicable law and will timely file with the FCC all forms required by the FCC in advance of offering video services or cable services;
- (2) A written description of the municipalities and unincorporated areas within counties to be served, in whole or in part, by the applicant, which description shall be sufficiently detailed so as to allow a local government to respond to subscriber inquiries, including the name of each municipality or county governing authority within the service area. For purposes of this subdivision (c)(2), an applicant may, as a supplement to a written description, provide a map on eight and one half inch by eleven inch (8 1/2 " by 11") paper that is clear and legible and that fairly depicts the service area by making reference to the municipal or county governing authority to be served. If the geographical area is less than an entire municipality or county, a map shall describe the boundaries of the geographic area to be served in clear and concise terms;
- (3) That the applicant/service provider intends to begin to offer video service or cable service for purchase or provide new broadband Internet service in accordance with [§ 7-59-311\(d\)](#) in each of the municipalities and the unincorporated areas of each county described in subdivision (c)(2) within twenty-four (24) months of the date of the issuance of a state-issued certificate of franchise authority. If the holder of a state-issued certificate of franchise authority fails to begin to offer the services within twenty-four (24) months in any such municipality or unincorporated area of a county, the certificate shall become null and void with regard to the municipality or unincorporated area of a county; provided, however, that the holder of a state-issued certificate of franchise authority shall provide the department with an explanation of the reason for the delay and whether or not it intends to subsequently amend its certificate to re-include such areas. A holder of a state-issued certificate of franchise authority may seek a waiver of the time period within which service must be offered as set forth in [§ 7-59-311\(e\)](#);
- (4) That the applicant agrees to indemnify and hold harmless, in accordance with [§ 7-59-318](#), the state, municipality, county and any employee or representative of the state, municipality or county, as well as any

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political subdivision of the state and any employee or representative of the political subdivision, individually and collectively, referred to in [§ 7-59-318](#) as the “indemnatee”;

(5) The location and telephone number of the principal place of business, the names of the principal executive officers of the applicant and the names of any persons authorized to represent the applicant before the department;

(6) That the applicant has the managerial, financial and technical qualifications to provide cable or video service;

(7) A description of the applicant's customer service complaint handling process, including policies on addressing customer service issues, billing adjustments and communication with government officials regarding customer complaints, and a local or toll-free telephone number at which a customer may contact the applicant. An applicant may satisfy this requirement by including the terms and conditions relating to customer complaints applicable to its customers, and the department shall conduct no review of the complaint handling process;

(8) That notice has been provided to the affected local governing authority of its right to receive a franchise fee consistent with this part. Notice will be provided to other entities with facilities in the rights-of-way, consistent with any nondiscriminatory and generally applicable local ordinance or resolution requiring the notice prior to performing any installation in the right-of-way;

(9) The applicant agrees to comply with the requirements of this part, expressly including the applicable nondiscrimination and service deployment requirements of [§ 7-59-311](#), and further, that the applicant acknowledges the provisions of [§ 7-59-312](#) relative to enforcement of nondiscrimination and deployment requirements;

(10) The applicant agrees to provide notice to an affected local governing authority ten (10) days prior to providing service in that jurisdiction; and

(11) That the application includes a minority owned business participation plan and the applicant agrees to comply with the provisions of such plan in accordance with [§ 7-59-313](#). The minority owned business participation plan shall be attached to and become a part of the application when the application is submitted.

(d)(1) No later than fifteen (15) days after the filing of an application, the department shall notify the applicant in writing as to whether the application is complete and, if the department has determined that the application is not complete, the department shall state the reasons for the determination in writing.

(2) After the filing of an application that the department has determined is complete, the department shall determine whether an applicant has the managerial, financial and technical qualifications to provide cable or video service. In connection with that review the department may require the applicant to submit its plan to comply with the requirements of [§ 7-59-311](#). The department shall consider the plan to be sufficient if it includes a clear statement that the applicant has evaluated its deployment plans and reasonably concludes

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that the plan will result in the required deployment. The plans are confidential and are not subject to the open records laws, codified in title 10, chapter 7. If the department determines that an applicant is managerially, financially and technically qualified to provide cable or video service and, if applicable, that its plan to comply with [§ 7-59-311](#) is sufficient, the department shall issue a state-issued certificate of franchise authority to the applicant. If the department determines that an applicant is not managerially, financially and technically qualified to provide cable or video service or, its plan to comply with [§ 7-59-311](#) is not sufficient, the department shall reject the application and shall state the reasons for the determination.

(3) Notwithstanding subdivision (d)(2), large telecommunications providers, qualified cable operators and incumbent cable service providers, including their subsidiaries and affiliates, are deemed by operation of law to have the managerial, financial and technical qualifications to obtain a state-issued certificate of franchise authority; provided, however, that the department shall be authorized, but not required, to conduct a review of an incumbent cable service provider's financial and technical qualification if the incumbent is seeking a new service area that would double its current size of operations and the incumbent does not have cable or video service assets of at least ten million dollars (\$10,000,000) in the state. For the purpose of this subdivision (d)(3), "operations", relevant to whether size has doubled, shall include either the number of additional households to be served or the actual proposed service area.

(4) The failure of the department to issue a state-issued certificate of franchise authority within forty-five (45) days of receipt of a completed application from any of the entities set forth in subdivision (d)(3) shall constitute issuance of the requested state-issued certificate of franchise authority without further action required by the applicant. The failure of the department to issue a state-issued certificate of franchise authority within one hundred eighty (180) days of receipt of a completed application from any other applicant shall constitute temporary issuance of the requested state-issued certificate of franchise authority to the applicant subject to final approval or rejection of the application by the department.

(e) The state-issued certificate of franchise authority issued by the department shall contain the following and no other items:

(1) A nonexclusive grant of authority to provide cable or video service in the areas set forth in the application;

(2) A nonexclusive grant of authority to construct, maintain and operate facilities through, along, upon, over and under any public rights-of-way, subject to the laws of this state, including the lawful exercise of police powers of the municipalities and counties in which the service is delivered;

(3) A statement that the grant of authority is subject to lawful operation of the cable or video service by the applicant or its successor in interest; and

(4) A statement that the grant of authority does not confer upon the holder of the state-issued certificate of franchise authority the right to place facilities on private property without the owner's consent to such placement, except that nothing in this part shall alter the condemnation authority provided pursuant to [§ 65-21-204](#) for internal improvements or as provided in title 29, chapter 16.

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(f)(1) The state-issued certificate of franchise authority issued by the department shall be for a term of ten (10) years. Upon the expiration of the initial term, the holder of a state-issued certificate of franchise authority may reapply pursuant to the process set forth in this section.

(2)(A) The holder of a state-issued certificate of franchise authority shall, as a condition of maintaining the franchise authority, pay an annual fee as provided in this subdivision (f)(2) to cover the direct costs of the department in administering [§§ 7-59-308](#) and [7-59-312](#) regarding the resolution of any complaints filed with the department. The holder of a state-issued certificate of franchise authority may designate that portion of the subscriber's bill attributable to the fee established by this subsection (f) and recover such amount from the subscriber as a separate item on the bill.

(B) For the fiscal year ending on June 30, 2009, the annual fee shall be collected in the aggregate from all holders of a state-issued certificate of franchise authority and shall not exceed one hundred seven thousand dollars (\$107,000). In order to fairly assess the fee, the department shall calculate the total number of subscribers obtaining service from holders of a state-issued certificate of franchise authority based on quarterly franchise fee statements as of the end of the second quarter each year provided pursuant to [§ 7-59-306](#). Based on such calculation, the department shall assess each holder of a state-issued certificate of franchise authority a percentage of the amount established in this subdivision (f)(2) for the fiscal year ending on June 30, 2009, to be paid to the department by each holder within thirty (30) days of the date the department notifies the holder of the holder's share of the annual fee. The annual fees for 2009 shall be assessed on July 31, 2009. The percentage shall be calculated by dividing the holder's number of cable or video subscribers served under a state-issued certificate of franchise authority by the total number of cable or video subscribers of all holders served under all state-issued certificates of franchise authority. Notwithstanding such provisions, any payments collected from the state-issued certificate of franchise authority application fees and amendment fees shall be applied to reduce the annual fee required by this subsection (f). In addition, no holder of a state-issued certificate of franchise authority shall be assessed any amounts attributable to enforcement actions directed against another holder of a state-issued certificate of franchise authority other than those arising under [§ 7-59-308](#).

(C)(i) For subsequent fiscal years, by September 15 of each year, the comptroller shall review the amount assessed in the previous fiscal year and make a determination as to whether the annual fee should be increased or decreased based on the following factors:

(a) The actual administrative costs incurred by the department in connection with the reasonable performance of its duties established in [§§ 7-59-308](#) and [7-59-312](#);

(b) The actual number of cable or video-related complaints handled by the department;

(c) The complexity of cable or video-related complaints handled by the department;

(d) The amount of application and amendment fees collected by the department;

(e) The amount of personnel time necessary to accomplish the functions of the department relating to

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holders of state-issued certificates of franchise authority; and

(f) Any other factors deemed essential by the comptroller to certify a fair annual assessment amount.

(ii) The comptroller shall certify the annual fee for each fiscal year and notify the department of the maximum annual fee that may be assessed to all holders of a state-issued certificate of franchise authority based on the calculation established in subdivision (f)(2)(B), which fee, if an increase as certified by the comptroller, shall in no event increase by more than five percent (5%) from the previous year's annual fee.

(g) Any successor in interest to the holder of a state-issued certificate of franchise authority shall apply for a state-issued certificate of franchise authority as provided for in this section and consistent with [§ 7-59-304\(a\)\(5\)](#).

(h) The state-issued certificate of franchise authority issued pursuant to this part may be terminated by the cable or video service provider by submitting written notice of the termination to the department with a copy to the governing authority of the affected municipality or county. The department is neither required nor authorized to act upon the notice. Terminating state-issued certificate of franchise authority holders shall provide all existing customers with ninety (90) days written notice of the termination prior to actual termination and shall refund to the customers any payments or deposits for which service has not been provided. A holder's decision to terminate its state-issued certificate of franchise authority does not relieve the holder of its obligations with respect to the payment of any franchise fees or other funds owed to a municipality or county or the removal of its facilities within the public right-of-way, consistent with local rights-of-way ordinances or resolutions.

(i)(1) A cable or video service provider shall file an application to amend its state-issued certificate of franchise authority to reflect any change in information required under subsection (c); provided, however, that the department may not deny the issuance of an amended state-issued certificate of franchise authority unless it has determined, in response to a complaint authorized by this part, that the holder of a state-issued certificate of franchise authority has:

(A) Acted in bad faith in its failure to comply with its obligations and representations made in its original application or any prior amendment to the application; or

(B) Acted in bad faith in its withdrawal of service from areas within which there is no access to other cable or video service.

(2) The applicant must file a copy of any amendment with the governing authority of the affected municipality or county. If the amendment includes new areas within the holder's franchise area, the applicable provisions and requirements of subdivisions (c)(3) and (9) shall be met. Notice must be provided to other entities with facilities in the rights-of-way, consistent with any nondiscriminatory and generally applicable local ordinance or resolution requiring the notice prior to performing any installation in the right-of-way of the affected municipality or county.

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(j) Unless otherwise provided for in this section, the state-issued certificate of franchise authority issued pursuant to this part supersedes and is in lieu of any franchise authority or approval required by state or local law as of July 1, 2008.

(k) A large telecommunications provider shall apply for an initial state-issued certificate of franchise authority within one (1) year after July 1, 2008. A large telecommunications provider may apply for a local franchise at any time.

(l) A holder of a state-issued certificate of franchise authority shall comply with all applicable FCC requirements involving the distribution and notification of emergency messages over the emergency alert system consistent with the enforcement of the rules, and any waivers to the rules, as determined by the FCC. To the extent that a local government has the capacity, pursuant to an existing unexpired local franchise, to locally override the cable or video system, that capability shall remain active from the incumbent provider until the natural expiration of the franchise so long as the local emergency override capability is not in conflict with applicable state regulations concerning emergency communications. Notwithstanding an election by a cable provider or video service provider to terminate a local franchise, until the date the franchise would have naturally terminated, an incumbent cable or video service provider shall continue to provide emergency override capabilities that existed as of July 1, 2008, so long as the local emergency override capability is not in conflict with applicable state regulations concerning emergency communications.

§ 7-59-306. Franchise fee

(a)(1) Except as otherwise provided in this section, a holder of a state-issued certificate of franchise authority shall be required to pay a franchise fee equal to five percent (5%) of the holder's gross revenues derived from:

(A) The provision of cable or video service to subscribers located within the municipality or unincorporated areas of the county; and

(B) Nonsubscribers for cable and video advertising services and as commissions for cable and video home shopping services as allocated under subsection (b).

(2) An incumbent cable or video service provider that terminates its existing local franchise by obtaining a state-issued certificate of franchise authority shall, unless otherwise provided by ordinance or resolution duly adopted by the legislative body of a municipality or county, continue to pay the franchise fee required under the terminated local franchise until the date upon which the local franchise would have naturally expired; provided, however, that the cable or video service provider shall be required to comply with access and deployment or build-out requirements, if any, under the terms of the terminated local franchise until the date upon which the local franchise would have naturally expired.

(3) Notwithstanding subdivision (a)(2), a municipality or county, pursuant to a duly adopted resolution, may require the holder of a state-issued certificate of franchise authority to pay the franchise fee enumerated in subdivision (a)(1). No change to the franchise fee shall be effective earlier than forty-five (45) days after the

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municipality or county provides the holder or the department with a copy of the resolution adopting the rate change. The adoption of such a resolution by the legislative body of a municipality or county shall relieve the provider of cable or video service from any access and deployment or build-out requirements not otherwise required by law including the provisions contained in [§ 7-59-304\(b\)\(1\)](#).

(b) The amount of a holder of a state-issued certificate of franchise authority's non-subscriber revenues from cable or video home shopping services that is allocable to a municipality or unincorporated area of a county is equal to the total amount of the holder's revenue received from such advertising and home shopping services multiplied by the ratio of the number of the holder's subscribers located in the municipality or in the unincorporated area of the county to the total number of the holder's subscribers. The ratio shall be based on the number of the holder's subscriber's as of January 1 of the preceding year or more current subscriber data at the provider's option, except that in the first year in which service is provided the ratio shall be computed as of the earliest practicable date.

(c)(1) A franchise fee imposed pursuant to this section shall be paid to the municipality or county within forty-five (45) days after the end of the quarter to which the payment relates. The payment shall be considered complete if accompanied by a statement showing, for the quarter covered by the payment:

(A) The aggregate amount of the holder of a state-issued certificate of franchise authority's gross revenues attributable to the municipality or unincorporated areas of the county;

(B) The franchise fee rate for the municipality or county;

(C) The amount of the franchise fee payment due to the municipality or county; and

(D) A breakdown of the franchise fee by category of product or service revenues, and a designation of revenue attributable to subscribers versus nonsubscribers, and the total number of subscribers in the relevant county or municipality, but only if and to the extent that the provider's billing or accounting systems already provide a breakdown of the revenue on a location jurisdictional basis for other business or reporting purposes. At a minimum, any provider shall provide a designation of revenue attributable to subscribers versus non-subscribers and the total number of subscribers in the relevant county or municipality.

(2) Any supporting statements submitted pursuant to subdivision (c)(1) shall be confidential and not subject to the open records law, codified in title 10, chapter 7.

(d)(1) The municipality or county may audit the business records of the holder of a state-issued certificate of franchise authority no more than once annually to the extent necessary to ensure compliance with this section. The audits may address a given period of time no more than once. The audits may not address any period less recent than three (3) years from the date the audit is commenced. The relevant business records shall be available for inspection by the employees or agents of the municipality or county at the location where the records are kept by the holder; provided, however, that insofar as practical as determined by the holder, a holder shall make the records available in the service area within which the audit relates. Any records obtained by or disclosed to a municipality or county by a holder of a state-issued certificate of

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franchise authority for the purpose of an audit or review, shall be confidential and not subject to the open records laws, codified in title 10, chapter 7.

(2)(A) A municipality or county or a holder of a state-issued certificate of franchise authority may bring a complaint relating to payments of franchise fees for any quarter to the department.

(B) A holder of a state-issued certificate of franchise authority seeking a refund of franchise fees paid with respect to any quarter may file a complaint with the department within five (5) years of the end of the quarter.

(3)(A) An action may be brought in a court of competent jurisdiction by either party to determine the correct amount of the franchise fee due to a municipality or county under this section. Any such action must be brought within the later of:

(i) Six (6) months after a final determination by the department; or

(ii) One (1) year after the complaint was filed with the department; provided, however, that no such action shall be brought more than six (6) years following the end of the quarter to which the disputed amount relates.

(B) Any such action shall be tried by the court de novo.

(4) Any of the time periods set forth in subdivision (d)(1) or (d)(2) may be extended by written agreement between the holder of a state-issued certificate of franchise authority and the municipality or county, and any extension of a time period in subdivision (d)(3)(A)(i) and (ii) shall automatically extend any subsequent time periods by the same amount of time.

(5) Each party shall bear the party's own costs incurred in connection with any such audit or review or dispute, except that in the event that an audit or review of a holder's records by a county or municipality that takes place out-of-state due to the impracticality to the holder of making the records available within the state, results in a final and unappealable determination by the department that the holder underpaid the franchise fee by more than ten percent (10%) for the period audited or reviewed, then the holder shall be obligated to reimburse the travel costs incurred by the auditors or reviewers. The amount of travel costs reimbursed pursuant to this subdivision (d)(5) shall not exceed amounts that would be allowed under the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

(e)(1) An action may be brought in a court of competent jurisdiction by either party appealing a final determination by the department of the amount of the franchise fee due to a municipality or county under this section; provided, however, that any such action must be brought within six (6) years following the end of the quarter to which the disputed amount relates. This time period may be extended by written agreement between the holder of a state-issued certificate of franchise authority and the municipality or county.

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- (2) Except as provided in subdivision (e)(3), each party shall bear the party's own costs incurred in connection with any such audit or review, or both the audit and review, or dispute.
- (3) In the event that an audit or review of a holder's records by a county or municipality that takes place out-of-state due to the impracticality to the holder of making the records available within the state, results in a final and unappealable determination by the department that the holder underpaid the franchise fee by more than ten percent (10%) for the period audited or reviewed, then the holder shall be obligated to reimburse the travel costs incurred by the auditors or reviewers. The amount of travel costs reimbursed pursuant to this subdivision (e)(3) shall not exceed amounts that would be allowed under the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.
- (f) A municipality or county may contract with the comptroller of the treasury or a third party for the audit or review of records or for the collection of the franchise fees and enforcement of this part; provided, however, that neither the comptroller nor a third party shall be compensated on a contingency fee basis with regard to any such activities.
- (g) Notwithstanding any provision of this section to the contrary, upon a credible indication or allegation that the holder of a state issued certificate of franchise authority has engaged in accounting fraud, the comptroller of the treasury, with the concurrence of the attorney general and reporter, may conduct an audit of the business records of the holder of a state-issued certificate of franchise authority to determine compliance with this section without regard to the limitations included in subsection (d). The relevant business records shall be available for inspection by the employees or agents of the comptroller at the location where the records are kept by the holder. Any information obtained by or disclosed to the comptroller shall be considered working papers of the comptroller and, therefore, are confidential and are not subject to the open records laws codified in title 10, chapter 7.
- (h) The cable or video service provider may designate that portion of a subscriber's bill attributable to any franchise fee imposed pursuant to this section, and recover such amount from the subscriber as a separate item on the bill.
- (i) No municipality or county may levy any additional tax or revenue enhancement measure or impose any additional fee on a cable or video service provider or its subscribers not authorized under state law, other than a franchise fee provided either under this part or under a local franchise agreement, that is intended as a form of compensation for the provider's occupancy of the public rights-of-way within a municipality or county.
- (1) Nothing in this part shall be construed to limit any authority of the municipality or county to impose any tax, fee, or assessment of general applicability. The franchise fee payments required by this part shall be in addition to any and all taxes or fees of general applicability.
- (2) A holder of a state-issued certificate of franchise authority shall not have or make any claim for any deduction or other credit of all or any part of the amount of the franchise fee payments from or against any municipal or county taxes or other fees of general applicability, except as expressly permitted by applicable

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law.

(3) A holder of a state-issued certificate of franchise authority shall not apply nor seek to apply all or any part of the amount of the franchise fee payments as a deduction or other credit from or against any municipal or county taxes or fees of general applicability, except as expressly permitted by applicable law.

(4) A holder of a state-issued certificate of franchise authority shall not apply or seek to apply all or any part of the amount of any municipal or county taxes or fees of general applicability as a deduction or other credit from or against any of its franchise fee obligations, except as expressly permitted by law.

§ 7-59-307. Local franchise

(a) Nothing in this part confers authority upon a municipality or county to require any cable or video service provider to negotiate a local cable or video service franchise agreement with a municipality or county.

(1) The decision to choose whether to utilize either a state-issued certificate of franchise authority or a local franchise is within the sole discretion of the cable or video service provider.

(2)(A) In the event an entity or person is providing cable or video service on July 1, 2008, under a local franchise previously granted by a municipality or county that has expired, the entity or person shall, as a condition of continuing to provide cable or video service within the municipality or county, either negotiate a renewal of an expired local franchise agreement or apply for a state-issued certificate of franchise authority.

(B) In the event that a municipality or county is unable to successfully negotiate a renewal of an expired local franchise with an incumbent provider within one hundred eighty (180) days after July 1, 2008, a municipality or county may require the incumbent provider to seek a state-issued certificate of franchise authority. The submission of an application for a state-issued certificate of franchise authority shall constitute interim authority to continue to provide service pending action by the department.

(b) Part 1 of this chapter is specifically preserved for providers who seek a local franchise. Parts 1 and 2 of this chapter, including, but not limited to, the provisions prohibiting more favorable terms in [§ 7-59-203](#), shall have no application to the state-issued certificate of franchise authority established in this part, and parts 1 and 2 of this chapter shall not apply in any manner or impose restrictions or obligations upon the holder operating under a state-issued certificate of franchise authority.

(c) No municipality, county, franchising authority, state agency, or political subdivision of the state may impose any additional requirements or request anything of value not provided under this part or any other state law on the provision of cable or video service by any cable or video service provider operating under a state-issued certificate of franchise authority within its jurisdiction, including, but not limited to, any requirement regulating rates charged by the cable or video service provider or any requirement to deploy any facility or equipment.

(d) No franchising authority, state agency, municipality, county or political subdivision of the state is

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authorized to regulate the provision of retail interconnected voice over Internet protocol service.

§ 7-59-308. State-issued certificate of franchise authority; customer service requirements

(a) In addition to the customer complaint handling process described in the application for a state-issued certificate of franchise authority, a holder of a state-issued certificate of franchise authority must comply with the customer service requirements found in [47 CFR 76.309\(c\)](#), which customer service requirements shall be the sole customer service requirements applicable to a holder of a state-issued certificate of franchise authority. Each holder of a state-issued certificate of franchise authority shall identify the department as the applicable franchise authority and include its telephone number on customer invoices.

(b) With regard to providers of cable or video service under the terms of local franchises, the municipal or county government shall handle customer inquiries or complaints, for customers located in the municipality or county, in accordance with the terms of the local franchise governing a cable service provider or provider of video services.

(c)(1) With regard to holders of state-issued certificates of franchise authority, customer complaints shall be handled in accordance with the terms of the service agreement between the holder and the customer. To the extent that a complaint remains unresolved following the procedures in the service agreement, a complaint may be brought to the department. A municipality or county that receives a customer complaint may refer the complaint to the department. If the department determines that the provider has violated the customer service requirements made applicable in this part, it shall order the provider to:

(A) Cure the violation within a reasonable period of time; or

(B) Issue a service credit equal to the charges for the period of time that the customer's service was affected by the provider's failure to comply with the applicable service requirement, which shall not exceed a maximum credit of three (3) months, and the affected period shall not include the time during which the complaint is considered by the department.

(2) If the department determines that no violation has occurred, then it shall dismiss the complaint.

(3) Except as provided for in this subsection (c), the department is not empowered to award remedies or to impose penalties of any kind for any customer service complaint that is not expressly provided for by the FCC's customer service requirements. The department is not empowered to initiate investigations or to review or regulate the general compliance of a provider with the customer service standards and is instead limited to addressing only the specific customer complaints brought to the department. Nothing in this part alters, limits, or expands any existing remedy available to any customer, or any power available to the attorney general and reporter, pursuant to the Tennessee Consumer Protection Act of 1977, compiled in title 47, chapter 18.

§ 7-59-309. PEG programming; minimum programming per day; PEG access support

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(a)(1) A county or municipality shall, within ten (10) days following the receipt of an application for a state-issued certificate of franchise authority from a cable or video service provider seeking approval to provide cable or video service to the county or municipality, provide notice to the department regarding the number of public, educational, and governmental access channels, "PEG channels", that have been activated and are authorized to be activated and the amount of any fee or other payment for PEG access support required under the terms of the franchise agreement with the incumbent cable service provider with the most subscribers in the municipality or county on January 1, 2008, whether or not the agreement has expired.

(2) For purposes of this section, a PEG channel is deemed activated if it is being utilized for PEG programming within the municipality or county.

(3) For purposes of this section, "PEG programming" means noncommercial local interest programming that may include meetings of local governing bodies, boards and commissions, community events, community sporting events, community school programs, arts programs, educational programming provided by departments or agencies of the federal or state government, cultural and history programs, classroom and instructional programs, community news and information programs, programs for children and seniors, or other similar programs.

(b) If a municipality or county has provided the notice required under subsection (a), then within ninety (90) days after beginning to offer cable or video service for purchase in a municipality or county, or, in the case such notice has not occurred, within ninety (90) days after the date the notice occurs, a holder of a state-issued certificate of franchise authority shall designate the same number of PEG channels for PEG programming that a municipality or county has activated as described in the notice provided pursuant to subsection (a). If access to PEG facilities or appropriate PEG personnel is not reasonably available to the holder during the ninety-day period, the period shall be extended proportionately day for day for up to ninety (90) additional days unless the party controlling access to the facility where the PEG programming is produced unreasonably denies the provider with access to the facility. The channels shall be provided notwithstanding whether the applicable incumbent cable service provider has terminated its franchise in favor of a state-issued certificate of franchise authority and no interruption in PEG programming distribution shall occur as a result of the termination.

(c)(1) In the event a municipality or county has not utilized the maximum number of PEG channels as described in the notice provided pursuant to subsection (a), access to the additional channel or channels shall be provided upon one hundred twenty (120) days' request to the holder of a state-issued certificate of franchise authority or incumbent cable service provider. PEG channels shall be subject to the utilization standards contained in the unexpired franchise until the expiration date of the franchise even if terminated for a state-issued certificate of franchise authority. In all cases following the expiration date of existing franchises, "substantial utilization" shall be determined as follows:

(A) For the first PEG channel activated on a system, eight (8) hours of PEG programming per day is programmed on average for each calendar quarter, which programming may include character-generated programming that is not outdated and is of interest to the local community; and

(B) For each additional activated PEG channel, ten (10) hours of PEG programming per business day, other

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than character-generated programming, is programmed for each calendar quarter.

(2) For purposes of measuring compliance with the minimum programming per day as provided in this subsection (c), the broadcast of any one (1) program in excess of two (2) times within any twenty-four-hour period or in excess of six (6) times in a business week shall not count toward the minimum requirement. An incumbent cable service provider or holder of a state-issued certificate of franchise authority may give notice of its intent to recover for its own use any PEG channel that is not substantially utilized; provided, that, if within ninety (90) days of the giving of the notice the county or municipality begins substantially utilizing the PEG channel, it shall remain a PEG channel. If at the end of such period the channel is not being substantially utilized, the incumbent cable service provider or holder of a state-issued certificate of franchise authority may recover the channel for its own use.

(d) After July 1, 2008, the maximum number of PEG channels to which a municipality or county has access with regard to a cable or video service provider shall be the number, if any, provided for in any local franchise agreement in effect as of January 1, 2008, notwithstanding the subsequent expiration of the agreement or termination of the agreement for a state-issued certificate of franchise authority.

(e) If a municipality or county did not have PEG channels under the incumbent cable service provider's franchise agreement as of July 1, 2008, the cable or video service provider shall designate upon written request a sufficient amount of capacity on its cable system or video service network to support up to three (3) PEG channels for a municipality or county with a population of fifty thousand (50,000) or more households; up to two (2) PEG channels for a municipality or county with less than fifty thousand (50,000) but not more than twenty-five thousand (25,000) households; and one (1) PEG channel for a municipality or county with less than twenty-five thousand (25,000) households. If a provider serves more than one (1) municipality or county from a single headend, then the number of households served over the entire system shall be aggregated for purposes of calculating the maximum number of channels that must be provided over the system under this subsection (e). The municipalities or counties served over a system shall determine how the channel or channels provided will be shared. To qualify for the first PEG channel on a system under this subsection (e), a municipality or county shall affirm its intent to substantially utilize the channel as provided for in this subsection (e). With regard to the first PEG channel, the substantial utilization standard shall not be reviewed until nine (9) months after the channel is activated by the municipality or county. Where one (1) or more PEG channels are authorized over a system, an additional channel, up to the maximum number of PEG channels allowed under this subsection (e), may be requested upon a showing that existing PEG channel or channels are being substantially utilized as provided for in this subsection (e).

(f)(1) The operation and content of any PEG channel provided pursuant to this section shall be the responsibility of the municipality or the county receiving the benefit of the channel and the cable or video service provider bears only the responsibility for the transmission of the channel. A holder of a state-issued certificate of franchise authority must transmit a PEG channel by one (1) of the following methods:

(A) Interconnection, which may be accomplished by direct cable, microwave link, satellite or other method of connection. Upon request, if technically feasible, an incumbent cable service provider must interconnect

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its network for the provision of PEG programming with a holder of a state-issued certificate of franchise authority. The terms of the interconnection shall be as mutually agreed and shall require the requesting holder to pay the reasonable costs of establishing the interconnection. It is declared to be the legislative intent that an incumbent cable service provider should not incur any additional cost as a result of an interconnection required pursuant to this subdivision (f)(1)(A). In the event a holder of a state-issued certificate of franchise authority and the incumbent cable service provider cannot agree upon the terms under which the interconnection is to be made or the costs of the interconnection, either party may request the department to determine the terms under which the interconnection shall be made and the costs of the interconnection. The determination of the department shall be final. Upon notice to the governing authority of the county or municipality, the time for the holder of a state-issued certificate of franchise authority to begin providing PEG programming as required in this section shall be tolled during the time the department is making its determination; or

(B) Transmission of the signal from each PEG channel programmer's local origination point, at the holder's expense, such expense to include any equipment necessary for the holder to transmit the signal from PEG channels activated as of July 1, 2008, if the origination point is in the holder's service area.

(2) All PEG channel programming provided to a cable or video service provider for transmission must meet the federal national television system committee standards or the advanced television committee standards. If a PEG channel programmer complies with these standards and the holder does not provide transmission of the programming without altering the transmission signal, then the holder must do one (1) of the following:

(A) Alter the transmission signal to make it compatible with the technology or protocol the holder uses to deliver its service; or

(B) Provide to the municipality or county, at the holder's expense, in the case of PEG channels activated as of July 1, 2008, the equipment needed to accomplish such alteration.

(3) If accessibility to PEG programming or a subscriber's ability to utilize PEG programming transmitted by a holder of a state-issued certificate of franchise authority is materially different than that provided by an incumbent cable provider, then the holder shall make available a description of the differences on a publicly accessible website and within the holder's marketing materials and customer service agreements.

(g) The provision of PEG content to the provider shall constitute authorization for the provider to carry the content, including, at the provider's option, beyond the jurisdictional boundaries of the municipality or county; provided, that the municipality or county can acquire the rights at no additional cost. If the municipality or county cannot acquire the rights, then the municipality or county shall be responsible for not transmitting the content to any provider that is unable to restrict the content to a jurisdictional boundary.

(h)(1) All PEG channels provided by either an incumbent cable or video service provider or by a holder of a state-issued certificate of franchise authority may be provided in a digital format at the provider's or holder's option; provided, that the availability to subscribers of the PEG programming provided by an incumbent cable provider or a holder of a state-issued certificate of franchise authority shall be in accordance with the

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terms of any applicable local franchise agreement, except as provided in this section.

(2) PEG channels may be provided as follows:

(A) If, as of July 1, 2008, a county or municipality has activated more than three (3) channels:

(i) One (1) such channel may, upon one hundred twenty (120) days' notice to the county or municipality, be moved to any tier of service to which at least fifty percent (50%) of the subscribers served by the cable or video service provider in the area served by the PEG channel actually subscribe;

(ii) Not earlier than two (2) years following July 1, 2008, an additional channel may be moved as provided in subdivision (h)(2)(A)(i); and

(iii) Not earlier than three (3) years after July 1, 2008, one (1) additional channel may be moved as provided in subdivision (h)(2)(A)(i);

(B) If, as of July 1, 2008, a county or municipality has activated three (3) channels:

(i) One (1) such channel may, upon one hundred twenty (120) days' notice to the county or municipality, be moved to any tier of service to which at least fifty percent (50%) of the subscribers served by the cable or video service provider in the area served by the PEG channel actually subscribe; and

(ii) Not earlier than two (2) years following July 1, 2008, an additional channel may be moved as provided in subdivision (h)(2)(B)(i);

(C) If, as of July 1, 2008, a county or municipality has activated two (2) channels, one (1) such channel may, upon one-hundred twenty (120) days' notice to the county or municipality, be moved to any tier of service to which at least fifty percent (50%) of the subscribers served by the cable or video service provider in the area served by the PEG channel actually subscribe; or

(D) Notwithstanding any provision in this section to the contrary, up to three (3) PEG channels of a municipality or county may, upon one hundred twenty (120) days' notice to the county or municipality, be provided on any tier of service if the channels are available to subscribers that only subscribe to a cable or video service provider's lowest cost tier. If additional equipment is required for such a subscriber to have access to the PEG channels provided on the tier of service, then the monthly cost for the equipment shall not exceed the greater of three dollars (\$3.00), adjusted annually to reflect inflation commencing after the effective date in accordance with the consumer's price index, or ten percent (10%) of the cost of the tier. The cable or video service provider may seek a waiver from the department of the foregoing price limitation if it can show that under the circumstances, the limitation is unreasonable. In addition to the PEG channel relocation rights under subdivisions (h)(2)(A), (B) and (C), following October 1, 2009, to the extent that a provider makes at least three (3) PEG channels available to subscribers as described in this subdivision (h)(2)(D), then upon at least sixty (60) days' notice to the county or municipality, any additional PEG channels may be moved to any tier of service to which at least fifty percent (50%) of the subscribers served by the cable or video service provider in the area served by the PEG channel actually subscribe.

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(3) Any PEG channels activated after April 1, 2008, may be provided on any tier of service to which at least fifty percent (50%) of the subscribers served by the cable or video service provider in the area served by the PEG channel actually subscribe.

(4) The determination as to whether a particular PEG channel or channels are to be moved pursuant to this subsection (h) shall be subject to the approval of the governing authority of the affected county or municipality.

(i) A holder of a state-issued certificate of franchise authority is not required to interconnect for or otherwise transmit PEG content that is branded with the logo, name, or other identifying marks of another cable or video service provider.

(j) Municipalities and counties shall be eligible for state-authorized PEG access support fees as follows:

(1) A holder of a state-issued certificate of franchise authority shall, immediately upon beginning to offer cable or video service for purchase in a municipality or county, be required to make state-authorized PEG access support payments that are equivalent to any PEG access support payments required to be made by the incumbent cable service provider in accordance with the notice required by subsection (a). The obligation shall continue until the natural expiration date of the incumbent cable service provider's local franchise that was in existence as of January 1, 2008, or, in the case of a local franchise that has expired but the terms of which are still in effect, until a new local franchise agreement or a state-issued certificate of franchise authority for the provider becomes effective, referred to in this section as the "initial PEG support period". The payment obligation shall be as follows:

(A) If the incumbent cable service provider provides PEG access support in the form of periodic payments to the municipal or county governing authority that are equal to a percentage of gross revenue or a specified per-subscriber amount, the holder of a state-issued franchise shall make state-authorized PEG support payments to the governing authority equal to the same percentage of gross revenue or per-subscriber amount; or

(B) If the incumbent cable service provider provides PEG access support to the municipal or county governing authority in the form of a lump-sum payment or a series of fixed payments, then to the extent that the incumbent cable service provider's obligation to make the payments remains unsatisfied as of January 1, 2008, the holder of a state-issued certificate of franchise authority shall pay to the municipality or county a state-authorized PEG support payment amount equal to the portion of the incumbent cable service provider's remaining obligation due during the calendar year multiplied by a fraction, the numerator of which is the total number of the holder's subscribers in the municipality or county thirty (30) days prior to the payment due date and the denominator of which is the total number of cable service and video service subscribers of all providers of cable and video service in the municipality or county as of the same date.

(2) Following the initial PEG support period, a municipality or county that had received initial PEG access support shall, upon written notification to all cable and video service providers serving the municipality or county, be entitled to continue to receive state-authorized PEG access support equal to the same percentage

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of gross revenues, not to exceed one percent (1%), as it was receiving at the end of the initial PEG support period; provided, however, that no municipality or county shall receive less on a per subscriber basis than it received from the initial PEG support payments. If such a municipality or county is receiving state-authorized PEG support in an amount that is less than one percent (1%), then a municipality or county may, pursuant to a duly adopted ordinance or resolution, increase its state-authorized PEG support to an amount not to exceed one percent (1%) of gross revenue for the sole purposes of paying any category of costs that were being covered by initial PEG support payments. The right of a municipality or county to require a state-authorized PEG support payment following the initial PEG support period under this subsection (j) is discretionary with the municipality or county and nothing shall prohibit a reduction of the payments.

(3) A municipality or county not receiving initial PEG support payments, may, pursuant to a duly adopted ordinance or resolution, require that a holder of a state-issued certificate of franchise authority pay state-authorized PEG support payments to the county or municipality in an amount not to exceed one percent (1%) of gross revenue, for the sole purpose of paying capital costs of equipment in connection with the operation of PEG channels; provided, that the aggregate amount of state-authorized PEG support payments pursuant to this subdivision (j)(3) together with any franchise fees required to be paid under [§ 7-59-306](#) shall not exceed five percent (5%) of gross revenues.

(4) Notwithstanding any provision of this part or state law to the contrary, amounts received by a municipality or county for PEG support may not be used for other purposes.

(5) All payments due under this section shall be remitted with the franchise fee payment, and the administrative provisions of [§ 7-59-306](#) and the definitions of [§ 7-59-303](#) shall apply.

(6) All cable and video service providers may designate that portion of the subscriber's bill attributable to any payment required under this section as a separate item on the bill and recover the amount from the subscriber.

(k)(1) Notwithstanding [§ 7-59-307\(c\)](#), an incumbent cable service provider that provides free cable service to schools or government offices in a municipality or county on July 1, 2008, shall be required to continue to provide the free service to those locations until the natural termination date of the local franchise agreement; provided, that the municipality or county provides the incumbent with a list of locations where the free service is provided as of July 1, 2008. Any other cable or video service provider or holder of a state-issued certificate of franchise authority that serves the same municipality or county as an incumbent cable service provider that is offering free cable service as provided for in this subsection (k) shall provide a comparable level of free cable or video service to the same locations as listed by the municipality or county until the natural termination date of the incumbent's local franchise agreement.

(2) Notwithstanding the requirements of subdivision (k)(1), all cable or video service providers providing cable or video services in a municipality or county, including all holders of a state-issued certificate of franchise authority providing services under the state-issued certificate, and the municipality or county are authorized to negotiate any other arrangement agreed to by all parties other than meeting the requirements of subdivision (k)(1).

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§ 7-59-310. Local authority; trenching; minimum advance notice

(a) Nothing in this part precludes the exercise of police powers by municipalities or counties, including the adoption and enforcement of any proper ordinances or resolutions not in conflict with this part.

(1) Nothing in this part diminishes or derogates from the ordinances or resolutions duly adopted by the governing body of a municipality or county and applicable to occupants or users of the public rights-of-way.

(2) Cable and video service providers must abide by the rights-of-way ordinances and resolutions of the municipality or county of general applicability in which the service is provided as well as any applicable state laws or rules.

(3) Nothing in this part diminishes or derogates from the existing powers promoting the health, safety and welfare of a community and its citizens, including the authority to regulate, during the permitting process, the installation and placement of video or cable facilities for the purpose of addressing the aesthetic concerns of the community.

(b)(1) Notwithstanding any provision in this part to the contrary, in cases of new construction or property development where utilities are to be placed underground, each municipality, county or other relevant permitting authority shall establish as a condition to issuing each permit for open trenching to any developer or property owner that the developer or property owner give all providers of cable or video service serving the applicable municipality or county at least sixty (60) days' prior notice of the construction or development, and of the particular dates on which open trenching will be available for the providers' installation of conduit, pedestals or vaults, and laterals, referred to in this subsection (b) as "equipment", to be provided at each such provider's expense.

(2) In the event a developer or property owner fails to give the required notice, the developer or property owner shall be responsible for the cost of new trenching for the installation of the cable or video service provider's equipment.

(3) Each provider shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that, if any cable or video service provider fails to install its equipment within the dates during which the trenches are scheduled to be open, as designated in the notice given by the developer or property owner, then should the trenches be closed after such time period, the cost of new trenching is to be borne by the cable or video service provider.

(4) In the event the relevant permitting rules of a municipality, county or other relevant permitting authority require less than sixty (60) days' advance notice to all providers of cable or video service providers service, then the required notice shall be the lesser of sixty (60) days or the number of days prior to construction that the relevant rules require for the advance notice, but in no event less than ten (10) days. If a municipality, county or other relevant permitting authority's rules do not specify any minimum advance notice of construction requirements, then the required notice shall be sixty (60) days.

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(c) The grant of authority provided holders of a state-issued certificate of franchise authority pursuant to [§ 7-59-305\(e\)](#) does not expressly or implicitly authorize such a holder to use publicly or privately owned conduits without a separate agreement with the owners of the conduits.

§ 7-59-311. Discrimination; annual report

(a)(1) A holder of a state-issued certificate of franchise authority shall not discriminate among residential subscribers or potential subscribers. For purposes of this section, “discrimination” means the denial of access to cable or video service to any individual or group of residential subscribers or potential subscribers because of the race, income, gender, or ethnicity of the residents in the local area in which the individual or group resides.

(2) Within forty-two (42) months after the date it receives a state-issued certificate of franchise authority, twenty-five percent (25%) of the households with access to a holder of a state-issued certificate of franchise authority's cable or video service shall be low-income households. Compliance with this requirement shall be an affirmative defense to any allegations of discrimination pursuant to subdivision (a)(1). With respect to an incumbent cable service provider that obtains a state-issued certificate of franchise authority, the affirmative obligation to provide access to low-income households as specified in this subsection (a) shall be measured based upon the percentage of low-income households that exist only in new areas that are not covered, or were not previously covered, by a local franchise, referred to in this section as the “new areas”. An incumbent cable service provider that obtains a state-issued certificate of franchise authority will be deemed to satisfy its affirmative obligation if the provider certifies to the department in its application for a state-issued certificate of franchise authority that it will deploy its cable or video system to all the households located within the proposed service area. An incumbent cable service provider that obtains a state-issued certificate of franchise authority and satisfies its affirmative obligation as provided for in this subsection (a) shall have an affirmative defense to an allegation of discrimination pursuant to subdivision (a)(1) with respect to new areas. With respect to areas served under a state-issued certificate of franchise authority by such a holder other than new areas, the holder shall have an affirmative defense to a subdivision (a)(1) complaint with respect to any municipality or county to the extent that the holder can establish that twenty-five percent (25%) of the households with access to its cable or video service in the applicable municipality or county are low-income households.

(3) After the forty-two (42) months has elapsed, except as provided in this subdivision (a)(3), all holders of a state-issued certificate of franchise authority shall prepare an annual report on the estimated percentage of low-income households with access to its service. This report shall contain information demonstrating the estimated percentage share of low-income households with access to its video or cable service compared with the total number of all customers with access to its video or cable service anywhere within the area served under its state-issued certificate of franchise authority. The report need not be broken out into percentages based on geographic subdivisions, counties, or municipalities. The report shall be provided to all counties and municipalities in which the provider offers video or cable service and to the department. With respect to incumbent cable providers that obtain a state-issued certificate of franchise authority, no annual report shall be required with respect to any service areas that are, or have been subject to, the provisions of a local franchise. To the extent that such a holder expands cable or video service to new areas pursuant to a state-issued certificate of franchise authority, the incumbent shall file the annual report limited

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to the new areas. In cases involving new areas where the annual report is required for the holders, if the holder certifies in its application to the department that it will provide cable or video service to all homes within the proposed new area that have at least a density of twenty (20) homes per mile measured from the holder's existing distribution plant, then no additional reports shall be required with respect to such areas.

(b) Except as otherwise provided in this section, a holder of a state-issued certificate of franchise authority shall provide access to its cable or video service, or to broadband Internet service as provided in subsection (d), to a number of households equal to at least thirty percent (30%) of the households in its franchise area within forty-two (42) months after the date it receives a state-issued certificate of franchise authority. With respect to incumbent cable service providers that obtain a state-issued certificate of franchise authority, the deployment thresholds provided for in this subsection (b) shall not be measured with respect to any service areas that are, or have been, subject to the provisions of a local franchise. To the extent that such a holder expands cable or video service to new areas pursuant to a state-issued certificate of franchise authority, the deployment thresholds shall apply to the new areas only.

(c) For purposes of determining whether a holder of a state-issued certificate of franchise authority has violated subsection (a) or (b), a holder of a state-issued certificate of franchise authority may satisfy the requirements of this section through the use of alternate technology, except for direct-to-home satellite service or direct broadcast satellite service, that offers service, functionality, and content that is demonstrably similar to that provided through the holder's video service network and may include a technology that does not require the use of any public rights-of-way or other alternative technology that, in the opinion of the department, is sufficiently similar to satisfy the obligations of this section. The technology utilized to comply with the requirements of this section shall include local public, education and government channels and messages over the emergency alert system as required by this part.

(d)(1) For purposes of calculating whether a holder of a state-issued certificate of franchise authority has met the requirements of subsection (b), each household to which the holder provides access to broadband Internet service that did not have access to such service from the holder prior to the date of application to the department for a state-issued certificate of franchise authority, shall count as two (2) households for measurement purposes. A household to which the holder of a state-issued certificate of franchise authority provides access to broadband Internet service that did not have broadband Internet access from any provider prior to the date of application to the department for a state-issued certificate of franchise authority, shall count as four (4) households for measurement purposes.

(2) It is the legislative intent that in measuring compliance with this section, the department may rely upon verification provided by Connected Tennessee, or such other agency or organization as may be recommended to the department by the Tennessee broadband task force created pursuant to [§ 7-52-408](#), referred to in this section as the “verifier”, as to the expansion of access to broadband Internet service to households by a holder of a state-issued certificate of franchise authority.

(3) To qualify for any broadband Internet service credit provided for in this section, a holder must have submitted to the verifier on the date of its application for a state-issued certificate of franchise authority a base line report identifying all zip codes in the state where the holder provides broadband Internet service to all households. If the holder provides broadband Internet service to fewer than all households in a zip code

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the holder shall identify the geographic area within the zip code where broadband Internet service is provided. The base line report shall be certified as true and correct by an officer of the holder. In providing a recommendation to the department as to whether a credit should be provided to a holder, the verifier shall provide the department with an explanation on what basis a credit should be provided supported by a sworn certification by an officer of the verifier that the holder is eligible for the specific credit that is recommended. The attorney general and reporter shall have the authority upon reasonable cause to investigate the request for or award of any credit under this section. Upon such an investigation, the attorney general and reporter shall have access to all information relied upon by the verifier with regard to the application for or award of a credit under this part.

(4) For the purposes of this subsection (d), households to which a holder extends access to broadband Internet service as described in this section shall be counted toward the deployment requirements of § 7-59-311(b), notwithstanding that the households may or may not have access to cable or video services from the holder. Any information submitted to, or obtained by the verifier or attorney general and reporter pursuant to this subsection (d) shall be considered proprietary information and therefore is confidential and not subject to the open records laws, codified in title 10, chapter 7.

(e)(1) A holder of a state-issued certificate of franchise authority may apply to the department for a waiver of or an extension of time to meet the requirements of subsection (a) or (b) or for an extension of time for deployment as set forth in [§ 7-59-305\(c\)\(3\)](#) if one (1) or more of the following conditions materially impaired the ability of the holder to meet the requirements:

(A) The inability to obtain access to public and private rights-of-way under reasonable terms and conditions;

(B) Developments or buildings not being subject to competition because of existing exclusive service arrangements;

(C) Developments or buildings being inaccessible using reasonable technical solutions under commercially reasonable terms and conditions;

(D) Natural disasters; or

(E) Factors beyond the control of the holder of a state-issued certificate of franchise authority.

(2) The department may grant the waiver or extension only if the holder has made substantial and continuous effort to meet the requirements of [subsection \(a\)](#) or [\(b\) or of § 7-59-305\(c\)\(3\)](#). If an extension is granted, the department shall establish a new compliance deadline. Absent a complaint brought as provided in [§ 7-59-312](#), the department is not authorized to make any determination regarding a provider's compliance with this section.

(f) Notwithstanding any other provision of this part to the contrary, a holder of a state-issued certificate of franchise authority shall not be obligated to provide service outside the holder's franchise area; provided, however, that a holder of a state-issued certificate of franchise authority that is a large telecommunications

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provider shall not be obligated to provide service to customers within its franchise area for whom the holder does not offer wireline broadband Internet service.

(g) Except as otherwise provided in this part, a holder of a state-issued certificate of franchise authority shall not be required to comply with, and no entity may impose or enforce, any mandatory build-out or deployment provisions, schedules, or requirements except as required by this section.

§ 7-59-312. Complaints; violations; penalties

(a) Individuals possess standing to bring claims as established in this part only for personal claims and not on behalf of other individuals. A municipality or county possesses standing to pursue claims on behalf of citizens residing within the county or municipality. In addition to all other remedies available under the law, upon receipt of a complaint from an individual, or upon receipt of a complaint brought by a municipality or county alleging a violation of [§ 7-59-311 \(a\)](#) or [\(b\)](#) concerning nondiscrimination and deployment of services, [§ 7-59-304 \(a\)](#)(1) requiring a franchise, [§ 7-59-305\(c\)\(8\)](#) and (10) concerning notice requirements, [§ 7-59-305\(h\)](#) concerning terminations of franchises, [§ 7-59-305\(i\)](#) concerning amendments to state-issued certificates of franchise authority, [§ 7-59-309](#) concerning public, educational and governmental access channels, and [§ 7-59-313](#) concerning minority owned business participation plans by a holder of a state-issued certificate of franchise authority, the department shall investigate the complaint and make a determination as to whether a violation has occurred. Except as expressly provided by this section or other specific provisions of this part, the department has no authority to regulate cable or video service provided by a holder of a state-issued certificate of franchise authority in this state, including, but not limited to, the rates, terms, or conditions of that service, and except to the extent that complaint authority is explicitly provided for in this section, the department has no general complaint authority to hear matters related to cable or video service or franchising.

(b) Upon receipt of the complaint, except as otherwise provided by this part, the department shall serve a copy of the complaint on the subject holder of a state-issued certificate of franchise authority who shall have thirty (30) days after receipt to submit a written response and any other relevant information the holder wishes to submit in response to the complaint.

(c) Upon a finding by the department that a violation of [§ 7-59-311\(a\)](#) has occurred, the holder of a state-issued certificate of franchise authority shall have a reasonable period of time, as determined by the department, to cure the noncompliance. If the holder of a state-issued certificate of franchise authority fails to cure within the specified time as determined by the department, the department may assess a civil penalty of not more than five thousand dollars (\$5,000) for each such violation or non-compliance. For purposes of this section, discrimination against each individual member of a group constitutes a separate violation and is subject to a separate penalty as set forth in this section.

(d)(1) Upon a finding by the department that a violation of any provision enumerated in subsection (a), other than a violation of [§ 7-59-311\(a\)](#) or [\(b\)](#) or a violation of [§ 7-59-313](#), has occurred, the holder of a state-issued certificate of franchise authority shall have a reasonable period of time, as determined by the department, to cure the noncompliance. If the holder of a state-issued certificate of franchise authority fails

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to cure within the specified time as determined by the department, the department may assess a civil penalty of not more than one thousand dollars (\$1,000) for each day of the violation or noncompliance, not to exceed a total of ten thousand dollars (\$10,000), counting all subscribers as a single violation or act of noncompliance; provided, however, that if the violation or noncompliance arises from the failure of the holder to meet the requirements of [§ 7-59-311\(b\)](#), then the department may assess a civil penalty of not more than ten thousand dollars (\$10,000) for each day of the violation or noncompliance, not to exceed a total of two million dollars (\$2,000,000).

(2) Upon a finding by the department that a violation of [§ 7-59-313](#) has occurred, the holder of a state-issued certificate of franchise authority shall have a reasonable period of time, as determined by the department, to cure the noncompliance. If the holder of a state-issued certificate of franchise authority fails to cure within the specified time as determined by the department, the department may assess a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000), per violation.

(e) In determining whether a civil penalty is appropriate, the department shall consider all of the following factors:

- (1) The seriousness of the noncompliance;
- (2) The good faith efforts of the holder to comply;
- (3) The holder's history of noncompliance;
- (4) The financial resources of the holder; and
- (5) Any other circumstances as determined by the department.

(f) The department may revoke, in whole or in part, a state-issued certificate of franchise authority if the department finds that a holder has acted in bad faith by repeatedly and knowingly failing to comply with a final department order requiring it to remedy violations of and noncompliance with [§ 7-59-311\(a\)](#) and [\(b\)](#). A determination to revoke a state-issued certificate of franchise authority shall take into account each of the factors enumerated in subdivisions (e)(1)--(5).

(g) Imposition of any civil penalty or a determination to revoke a franchise may be appealed by the holder within forty-five (45) days of the issuance of the penalty. Appeals shall be filed in any court of competent jurisdiction, which shall review the underlying decision de novo. The filing of an appeal shall not automatically stay a monetary penalty or order to cure, but an appeal shall automatically stay any order of revocation. Upon a showing of cure after the imposition of any penalty or revocation, the department may, but is not required to, reduce the penalty or rescind the revocation.

(h) Any penalties assessed under subsections (c) or (d) shall be paid to the state treasurer for deposit into the Tennessee broadband deployment fund, created pursuant to [§ 7-59-315](#).

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§ 7-59-313. Minority owned business participation plan

(a) For the purposes of this section, unless the context otherwise requires:

(1) “Minority owned business” means a business that is solely owned, or at least fifty-one percent (51%) of the assets or outstanding stock of which is owned, by an individual who personally manages and controls the daily operations of the business and who is impeded from normal entry into the economic mainstream because of:

(A) Past practices of discrimination based on race, religion, ethnic background or sex, including, but not limited to, women;

(B) A disability as defined in [§ 4-26-102](#), including, but not limited to, disabled veterans; or

(C) Past practices of racial discrimination against African-Americans; and

(2) “Minority owned business participation plan” means a business plan for actively soliciting bids from minority owned businesses and letting contracts to such businesses when establishing, providing or expanding cable or video services and related support facilities. The plan shall include the following information:

(A) A proposal for purchasing goods and services from minority owned businesses;

(B) Information on programs to provide technical assistance to such businesses; and

(C) A statement of intent to follow its minority owned business participation plan.

(b) A minority owned business participation plan shall strive to maximize participation of minority owned businesses through both prime and second tier business contracting opportunities and shall strive to achieve a level of minority owned business participation representative of the population demographics of this state.

(c) Notwithstanding any provision of this part to the contrary, a state-issued certificate of franchise authority shall not be issued by the department to any applicant that fails to include a minority owned business participation plan in the applicant's application. The department shall review each application to confirm that the minority owned business participation plan includes all information required pursuant to this section.

(d) Notwithstanding any provision of this part to the contrary, the department shall annually review each holder of a state-issued certificate of franchise authority to determine compliance with the holder's minority owned business participation plan. In conjunction with the review, by January 31 of each year, each holder of a state-issued certificate of franchise authority shall prepare and submit an annual report to the department concerning the holder's minority owned business participation plan and compliance with the plan. The department shall annually prepare a compliance report to be delivered to the governor and the

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clerks of the senate and the house of representatives. The compliance report shall also be posted on the web site of the department.

(e) Notwithstanding any provision of this part to the contrary, a holder of a state-issued certificate of franchise authority determined by the department not to be in compliance with the holder's minority business participation plan shall be found in violation of this section and shall be subject to [§ 7-59-312\(d\)\(2\)](#).

§ 7-59-314. Report

(a)(1) Beginning on March 1, 2009, the department shall file a report on March 1 of each year until 2011 with the speaker of the senate, the speaker of the house of representatives, the governor, the chair of the commerce, labor and agriculture committee of the senate and the chair of the commerce committee of the house of representatives. The report shall be compiled by the department. The report shall contain the following information:

(A) The number of applications made for state-issued certificates of franchise authority and amendments to the applications during the prior year;

(B) The number of applications or amendments approved;

(C) The number of applications or amendments denied and the reason for the denials;

(D) The service areas covered by each holder of a state-issued certificate of franchise authority;

(E) The number of customer complaints and a description of the efficacy of the department's complaint resolution process;

(F) The number of municipalities or counties in which two (2) or more cable or video service providers are serving customers; and

(G) The department's aggregated summary of low-income households' access reports submitted by holders of state-issued certificates of franchise authority.

(2) In preparing this report, the department shall rely on information filed with the department or available as public information, but the department shall not issue mandatory data requests or subpoenas to collect the information. The department may invite all cable or video service providers to submit voluntary reports supplying information relating to the services and products offered in this state, and any other information the cable or video services providers volunteer regarding future plans for deployment, new services, new technology, or the impact of competition. All such reports received shall be appended to the department's report.

(b)(1) Upon receipt of an application to obtain a state-issued certificate of franchise authority, the department shall notify all municipalities or counties identified as part of the applicant's service area to

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obtain the following information:

- (A) The number of activated PEG channels for the municipality or county; and
- (B) The terms of any PEG support being provided by the incumbent cable provider.

(2) The department shall compile and keep current the information for the use of holders of state-issued certificates of franchise authority. If a municipality or county fails to provide this information after being requested to do so by the department, the holder of a state-issued certificate of franchise authority shall not be held in violation or noncompliance with [§ 7-59-309](#) with regard to the municipality or county until such time as the department has received the information and the holder has been given adequate time to comply with [§ 7-59-309](#).

§ 7-59-315. Tennessee broadband deployment fund

(a) There is created the “Tennessee broadband deployment fund”, referred to in this section as the fund, as a separate account in the state treasury. Amounts remaining in the fund at the end of each fiscal year shall not revert to the general fund. Moneys in the fund shall be invested by the state treasurer pursuant to title 9, chapter 4, part 6 for the sole benefit of the fund.

(b)(1) Moneys shall be deposited into the fund as provided by law or provisions of the general appropriation act. Moneys in the fund shall be used by the department to promote the deployment of broadband Internet service to unserved areas of the state pursuant to guidelines developed by the department in consultation with the broadband task force and Connected Tennessee. The guidelines shall provide for the making of grants to political subdivisions or entities of political subdivisions, cable service providers, video service providers, telecommunications companies and similar entities as the department may determine.

(2) It is declared to be the legislative intent that broadband Internet service be deployed throughout the state as expeditiously as possible. The general assembly finds that it is in the public interest that broadband Internet service be made available in unserved areas through means of public investment, private investment and public private partnerships.

§ 7-59-316. Telecommunications joint venture

(a)(1) Except as otherwise provided in this section, notwithstanding chapter 52 of this title and title 65, chapter 25, or any other state law to the contrary, a county or municipality, or any entity otherwise authorized by law to act on a county or municipality's behalf, or a cooperative is authorized to participate in a telecommunications joint venture that is created to provide broadband services to areas within the jurisdiction of the municipality, county or cooperative that has been determined to be an historically unserved area, meaning that the area does not have access to broadband Internet services, has been an area developed for residential use for more than five (5) years, and is outside the service area of a video or cable service local franchise holder or the franchise area of a holder of a state-issued certificate of franchise authority.

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(2) For purposes of this section, a “telecommunications joint venture” means a joint venture or other business relationship with one (1) or more third parties to provide broadband services that may include broadband Internet services, voice over Internet protocol telephonic services, video over Internet protocol services and similar services provided over broadband facilities.

(3) A telecommunications joint venture authorized by this section shall only be authorized to provide broadband services in historically unserved areas.

(b)(1) A telecommunications joint venture created and operated pursuant to the authority granted in this section may be subsidized by one (1) or more of the participants as may be determined by the participants; provided, however, that electric cooperatives and municipal electric systems shall comply with:

(A) Any applicable provisions of contracts with suppliers of electricity prohibiting or otherwise limiting cross-subsidies of services with electricity revenues;

(B) Chapter 52, part 6 of this title; and

(C) Title 65, chapter 25, part 2.

(2) It is the legislative intent that any joint venture established under this section shall not be subsidized by revenues from power or other utility operations.

(c)(1) Until July 1, 2018, unless such date is extended by the general assembly, notwithstanding [§ 65-21-105](#), in any area of the state determined by the department, in accordance with subsection (d), to be an historically unserved area where there is no access to broadband Internet services, a municipality or cooperatively owned utility shall not receive or request in exchange for new pole attachments any pole attachment charge from a cable or video service provider, or a telecommunications joint venture seeking to provide new broadband Internet services to the area that exceeds fifty percent (50%) of the highest pole attachment rate charged by the municipality or cooperatively owned utility to a cable service provider on January 1, 2008. For purposes of the discounted pole attachment charge for new pole attachments in historically unserved areas, no increase in the underlying pole attachment rate shall raise the discounted rate until July 1, 2018, unless such date is extended by the general assembly. This subdivision (c)(1) does not apply to any pole attachment charges for poles where, as of January 1, 2008, the cable or video service provider or a telecommunications joint venture is paying a pole attachment charge.

(2) A municipality or cooperatively owned utility shall provide access to its poles and conduit located in public rights-of-way to any entity listed in subdivision (c)(1) that requests a pole attachment agreement on terms and conditions consistent with this section and other applicable law in the historically unserved area.

(d) Any municipality or county government seeking to establish a joint venture as provided in this part shall apply to the department for a finding that the area is historically unserved and that no private provider intends to serve that area. The applicant shall provide a copy of the application to all telecommunications providers offering service in the area applied for and to all holders of state-issued certificates of franchise authority or local franchises in areas within fifty (50) miles of the area applied for, referred to in this

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subsection (d) as “area broadband providers”, at the same time it submits its application to the department. The application shall include proof that the municipality or county has publicly advertised its intent to establish a joint venture to provide service pursuant to this section. The municipality or county shall demonstrate that it has provided notice of its intent to all area broadband providers at least sixty (60) days prior to its submission of its application to the department. All area broadband providers shall have the right to submit comments regarding any application to the department. All records of a telecommunications joint venture shall be available for disclosure and public inspection pursuant to title 10, chapter 7. All meetings of or pertaining to a telecommunications joint venture shall be open meetings in accordance with title 8, chapter 44.

(e) The comptroller in cooperation with the department shall provide a report to the general assembly not later than January 31, 2011, and thereafter on January 31 annually, on the status of the provision of broadband services in accordance with this section.

§ 7-59-317. Certificate holder; notices to local governments

A holder of a state-issued certificate of franchise authority shall provide affected local governments with notices as provided in this section, which notices shall include at a minimum:

- (1) Notice of filing of an application for a state-issued certificate of franchise authority, contemporaneously with the filing of the application;
- (2) Notice of offering service for purchase in an affected county or municipality, ten (10) days prior to providing service;
- (3) Notice of filing of an amendment to its application or its previously granted state-issued certificate of franchise authority, contemporaneously with the filing of the amendment with the department;
- (4) Notice of its intent to transfer its state-issued certificate of franchise authority to a successor in interest at least ten (10) days prior to the consummation of the transaction; and
- (5) Notice of termination of a state-issued certificate of franchise authority, contemporaneously with the filing of the notice with the department.

§ 7-59-318. Indemnification

(a) The holder of a state-issued certificate of franchise authority agrees to indemnify and hold harmless the state, municipality, county and any employee or representative of the state, municipality or county, individually and collectively referred to in this section and [§ 7-59-305\(c\)\(4\)](#) as the “indemnitee”, as well as any political subdivision of the state and any employee or representative of the political subdivision, from all claims, demands, causes of action, liability, judgments, costs and expenses or losses for injury or death to persons or damage to property owned by, and workers’ compensation claims, collectively referred to in this section as “claims”, against any parties indemnified in accordance with this section, arising out of, caused by, or as a result of the holder's exercising its authority granted under a state-issued certificate of franchise

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authority, except for claims related to public, educational or governmental channels controlled by an indemnitee or other third-party designated by the indemnitee; provided, that the indemnitee shall give the holder written notice of the holder's obligation to indemnify the indemnitee within ten (10) business days of receipt of a claim. Should the indemnitee determine that it is necessary for it to employ separate counsel, the costs for the separate counsel shall be the responsibility of the indemnitee. If the indemnitee determines in good faith that its interests cannot be represented by the holder, the holder shall be excused from any obligation to defend that indemnitee and shall have standing to intervene in any proceeding relating to such claims, but shall remain obligated to indemnify the indemnitee as provided in this section and shall retain the right to participate in the relevant proceeding to protect its own interests.

(b) Notwithstanding subsection (a), a holder of a state-issued certificate of franchise authority shall not be required to indemnify or hold harmless any indemnitee whose negligence or willful misconduct caused the claims.

(c) No indemnitee shall settle any claim for which a holder is responsible without the written consent of the holder.