CHAPTER 12

Cable Television

ARTICLE 1

General Provisions

**SECTION 58‑12‑5.** Purpose; findings and preemption as to cable and video service.

 (A) Competition between cable television, satellite, and other providers has promoted and continues to promote additional consumer choices for cable service, video service, and similar services, and the technology used to provide these services is not constrained or limited by municipal or county boundaries. Accordingly, it is appropriate for the General Assembly to review and update the policy of this State with regard to these services. The General Assembly finds that revising the current system of regulation of these services will relieve consumers of unnecessary costs and burdens, encourage investment, and promote deployment of innovative offerings that provide competitive choices for consumers. Additionally, the General Assembly finds that it is in the best interests of consumers for cable and video franchises to be nonexclusive and for requests for competitive cable or video franchises not to be unreasonably refused. The General Assembly further finds that a streamlined policy framework providing statewide uniformity is necessary to allow these functionally equivalent services to compete fairly and to deploy new consumer services more quickly.

 (B) After the effective date of this act, no municipality or county may issue a cable franchise pursuant to Section 58‑12‑30. A municipality or county may continue to enforce existing cable franchises until they expire or are terminated pursuant to Section 58‑12‑325.

 (C) This chapter occupies the entire field of franchising or otherwise regulating cable and video service and preempts any ordinance, resolution, or similar matter adopted by a municipality or county that purports to address franchising or otherwise regulating cable or video service.

HISTORY: 2006 Act No. 288, Section 2, eff May 23, 2006; 2007 Act No. 8, Section 1, eff March 30, 2007.

Editor’s Note

2006 Act No. 288, Section 1, provides as follows:

“This act is known and may be cited as the ‘South Carolina Competitive Cable Services Act’ “.

ARTICLE 2

Franchising by Municipalities and Counties

**SECTION 58‑12‑10.** Installation of cable over or beneath public lands, highways, roads or waters.

 Any cable television company may, upon the approval of the governing body of the city or county, construct, maintain, and operate its cable over or beneath any of the public lands of this State, over, beneath, or along any of the highways or public roads of the State, or over or beneath any of the waters of the State; provided, that cable television companies shall, unless heretofore covered by court decree, where possible and practicable, enter into an agreement with a telephone company or electric power company whereby the cable television company has the right to attach its cables to the poles owned by the telephone company or electric power company, or to bury its cable beneath the ground in conduits owned by the telephone company or electric power company; provided, further, that such cable is constructed so as not to endanger the safety of persons or to interfere with the use of these public lands, highways, or public roads, or the navigation of these waters; provided, further, that the agency charged with the maintenance of these public lands, highways, or public roads, or waters of the State shall require that the cable television company obtain a permit prior to placing its cable over, under, or along these public lands, highways, or public roads, or waters; and, provided, further, that if both electrical and telephone facilities in an area are underground then the cable television lines in that area shall also be placed underground. This proviso does not give any additional rights to public utilities to grant an easement. Provided, further, that if the cable is located in such a manner so as to constitute an interference with the right of ingress or egress to land that is subject to the easement, the cable television companies shall obtain the consent of the landowner, his heirs, or assigns, from which the original easement was obtained.

HISTORY: 1976 Act No. 688 Section 1; 1983 Act No. 134 Section 1, eff June 17, 1983.

**SECTION 58‑12‑20.** Interference with maintenance of public lands, highways, roads or waters; damage to roads or highways.

 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 conduits of such telephone company or electric power company, all cable television cables and appurtenances shall be moved or removed at the cost of the cable television company. Whenever damage results to public highways or roads as a result of operations by a cable television company, such cable television company shall repair the highway or road according to department standards and all cost shall be borne by the cable television company.

HISTORY: 1976 Act No. 688 Section 2.

**SECTION 58‑12‑30.** Franchising by counties and municipalities.

 (a) The governing body of each municipality and each county in this State shall have the power and authority to regulate the operation of any cable television system which serves customers within its territorial limits by the issuance of franchise licenses after public notice showing the terms of any proposed franchise agreement and public initiation for bids and not inconsistent with the rules and regulations of the Federal Communications Commission.

 (b) Six months after June 29, 1976, a cable television system shall not serve customers in any unincorporated area without obtaining a franchise from the county; provided, that a cable television system to which this subsection applies may continue to serve customers after June 29, 1976, if an application for a franchise is filed at least ninety days prior to the date on which such franchise would otherwise be required and the cable television system and the county have, despite good faith negotiations, not been able to reach agreement upon the terms of such franchise.

 (c) A county shall not issue a franchise for any area which is within any municipality.

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

 (e) The governing body of a county shall not deny to any cable television system a franchise for any area in which such cable television system has wires in place on June 29, 1976, or holds a Certificate of Compliance from the Federal Communications Commission. Franchises issued by a municipality or county shall not be inconsistent with the rules and regulations of the Federal Communications Commission.

 (f) 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.

HISTORY: 1976 Act No. 688 Section 3.

**SECTION 58‑12‑40.** Easements or rights‑of‑way to contain provision contemplating use by cable television companies.

 Any easement or right‑of‑way obtained after June 29, 1976, by the State or any political subdivision thereof for the purpose of constructing a highway or public road and any easement or right‑of‑way obtained by any telephone or electric power company from the owner of any land who had previously granted an easement to this State or any political subdivision thereof for the purpose of constructing a highway or public road upon such land to which the easement or right‑of‑way relates shall clearly set forth the possibility that the easement or right‑of‑way may be used in the future by cable television companies for the purposes provided in this chapter.

HISTORY: 1976 Act No. 688 Section 4.

**SECTION 58‑12‑50.** Penalties for violations; persons who may bring suit.

 Any person erecting or maintaining any such cable in violation of the provisions hereof shall forfeit and pay as a penalty therefor the sum of five dollars per day for each day such default continues after he shall have been given thirty days written notice specifying the default or defect in the manner of erection, construction or maintenance thereof, to be recovered at the suit of any citizen of any county in which such violation occurs, or by the agency charged with the maintenance of the public lands, highways or public roads, or waters of the State. The sum so recovered, after paying therefrom all the expenses incurred in the prosecution of such suit, shall be paid into the treasury of the county in which the violation occurred or, if the violation occurred in more than one county, into the treasury of each county in which the violation occurred on a pro rata basis.

HISTORY: 1976 Act No. 688 Section 5.

**SECTION 58‑12‑60.** Damage to private property.

 No cable television company may damage private property on which a utility pole is located without just compensation to the landowner for the damage suffered by the landowner’s property.

HISTORY: 1976 Act No. 688 Section 6.

**SECTION 58‑12‑70.** Underground installations on private property; consent required.

 No cable television company may install underground wires or other underground equipment on private property without the written consent of the property owner. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined one hundred dollars.

HISTORY: 1976 Act No. 688 Section 7.

**SECTION 58‑12‑80.** Fees payable by companies receiving benefits of grandfather clauses.

 Any cable television company which shall receive the benefits of operating under the grandfather clauses contained in this chapter shall pay to the county governing body or municipality the same fees as would be charged to a new franchising company by the county or municipality.

HISTORY: 1976 Act No. 688 Section 8.

**SECTION 58‑12‑90.** Channel to be made available to Educational Television Commission.

 All cable television companies operating in the State shall make available one six megahertz channel for the transmissions of the South Carolina Educational Television Commission.

HISTORY: 1976 Act No. 688 Section 9; 1990 Act No. 533, Section 1, eff June 4, 1990.

**SECTION 58‑12‑100.** Companies to maintain complaint service.

 Any cable television company franchised and operating in this State shall maintain a complaint service for the purpose of receiving consumer complaints concerning service or any other matter relating to its operations. The company 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. Such records shall be subject to inspection by the governing body which issued the franchise.

HISTORY: 1976 Act No. 688 Section 10.

**SECTION 58‑12‑110.** Televising of athletic events.

 No institution of higher learning funded by state appropriations shall enter into any contract with a cable television company franchised pursuant to this chapter which gives an exclusive right to the cable television company concerned to televise athletic events in which athletic teams of such institution participate to the exclusion of free television.

HISTORY: 1976 Act No. 688 Section 11.

**SECTION 58‑12‑120.** Cable television company and cable television system defined.

 The term “cable television company” and “cable television system” as used in this act includes a corporation incorporated under the laws of this State, a corporation incorporated under the laws of another state which has complied with the laws of this State regulating the doing of business in this State by foreign corporations, a general or limited partnership organized under the laws of this State, and a general or limited partnership organized under the laws of another state which has complied with any laws of this State regulating the doing of business in this State by these partnerships.

HISTORY: 1983 Act No. 134 Section 2, eff June 17, 1983.

**SECTION 58‑12‑130.** Fee for right‑of‑way usage; availability of channel to Educational Television Commission; issuance of continuing permits; enforcement.

 (A) The Department of Transportation may issue a general continuing permit to each cable television company operating in this State. Upon the reporting by the company of a proposed extension of its cable subject to this chapter and approval of the extension by the department, the permit applies to each extension. This authorization eliminates the necessity of the issuance of a permit for each extension.

 (B) Each cable television company in this State shall make available one six megahertz channel for the transmissions of the South Carolina Educational Television Commission.

 (C) The department may initiate appropriate legal action to enforce the permit requirements of this section against nonpermitted cable encroachment located within state highway rights‑of‑way.

HISTORY: 1984 Act No. 512, Part II, Section 46, became law on June 28, 1984, without the Governor’s signature; 1990 Act No. 533, Section 2, eff June 4, 1990; 1993 Act No. 181, Section 1553, eff July 1, 1993.

ARTICLE 3

State‑Issued Certificate of Franchise Authority

**SECTION 58‑12‑300.** Definitions.

 As used in this article, the following terms mean:

 (1) “Cable service” is defined as set forth in 47 U.S.C. Section 522(6).

 (2) “Cable service provider” means a person or entity who is a cable operator, as defined in 47 U.S.C. Section 522(5), throughout the area it serves pursuant to Section 58‑12‑310, and is subject to Section 58‑12‑350.

 (3) “Cable system” is defined as set forth in 47 U.S.C. Section 522(7).

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

 (5) “Franchising authority” means a governmental entity empowered by federal, state, or local law to grant a franchise for cable or video services. With regard to the holder of a state‑issued certificate of franchise authority within the areas covered by the certificate, the Secretary of State is the sole franchising authority.

 (6) “Gross revenues” means all revenues received from subscribers for the provision of cable or video services, including cable or video franchise fees, and all revenues received from nonsubscribers for advertising and home shopping services. Gross revenues shall not include:

 (a) any tax, surcharge, or governmental fee billed to subscribers including, but not limited to, a business license tax levied by a municipality pursuant to Article 20, Chapter 9, Title 58;

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

 (c) any revenue received by any affiliate or any other person in exchange for supplying goods or services used by the provider to provide video programming;

 (d) refunds, rebates, or discounts;

 (e) returned check fees or interest;

 (f) sales or rental of property, except such property as the subscriber is required to buy or rent exclusively from the cable or video service provider to receive cable or video service;

 (g) any revenue received for installing or maintaining inside wiring for services other than cable or video services;

 (h) any revenues from services provided over the network that are associated with or classified as noncable or nonvideo services under federal law, including, without limitation, revenues received from telecommunications services, information services, Internet access services, directory or Internet advertising revenue (including, without limitation, yellow pages, white pages, banner advertisements, and electronic publishing advertising). Where the sale of any such noncable or nonvideo service is bundled with the sale of any cable or video service or services and sold for a single nonitemized price, the term “gross revenues” shall include only those revenues that are attributable to cable or video services based on the provider’s books and records, such revenues to be allocated in a manner consistent with Generally Accepted Accounting Principles;

 (i) sales for resale with respect to which the purchaser is required to pay a franchise fee; or

 (j) any reimbursement of costs including, but not limited to, the reimbursements by programmers of marketing costs incurred for the promotion or introduction of video programming.

 (7) “Incumbent cable service provider” means the cable service provider serving the largest number of subscribers in a particular municipality or in the unincorporated area of a county on the effective date of this article.

 (8) “Public right‑of‑way” means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, or waterway.

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

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

 (11) “Video service provider” means a person that provides video service.

HISTORY: 2006 Act No. 288, Section 4, eff May 23, 2006; 2007 Act No. 8, Section 2, eff March 30, 2007.

Editor’s Note

2006 Act No. 288, Section 1, provides as follows:

“This act is known and may be cited as the ‘South Carolina Competitive Cable Services Act’ “.

**SECTION 58‑12‑310.** Application for certificate; procedure.

 (A) Except as provided in Section 58‑12‑325, a person or entity providing cable service in this State on the effective date of this article under a franchise previously granted by the governing body of a municipality or county is not subject to nor may it avail itself of the state‑issued certificate of franchise authority provisions of this article with respect to the municipality or county until the franchise expires. Notwithstanding the foregoing, any such cable service provider may seek authorization to provide service in areas where it currently does not have an existing franchise agreement pursuant to provisions of this article.

 (B) Subject to the provisions of subsection (A), a person or entity seeking to provide cable or video service in this State after the effective date of this article must file an application for a state‑issued certificate of franchise authority with the Secretary of State as required by this section. The application must be on a form to be established by the Secretary of State and must be accompanied by a fee, not to exceed one hundred ten dollars, to be established by the Secretary of State. If the person or entity is not authorized by other provisions of law to construct, maintain, or operate any type of facilities in the public rights‑of‑way, the person or entity shall file the application before constructing, maintaining, or operating any facilities in the public rights‑of‑way. If the person or entity is authorized by other provisions of law to construct, maintain, or operate any type of facilities in the public rights‑of‑way, the person or entity shall file the application before providing cable or video service in any given service area. Such application must be accompanied by an affidavit submitted by the applicant and signed by an officer or general partner of the applicant affirming the following:

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

 (2) a written description of the municipalities and a written description of the unincorporated areas of counties to be served, in whole or in part, by the applicant, which written description must be amended by the applicant before the provision of cable or video service within an area not described in a previous application or amendment filed by the applicant. For purposes of this subsection, a map or other graphic representation may supplement, but not substitute for, the written description; and

 (3) the location of the principal place of business and the names of the principal executive officers of the applicant.

 A holder of a state‑issued certificate of franchise authority who seeks to amend the certificate to include additional areas to be served shall file an amended application with the Secretary of State that reflects the new service areas to be served.

 However, a holder of a state‑issued certificate of franchise authority must begin to deploy cable or video service in each of the municipalities and in each of the unincorporated areas of counties described in subsection (B)(2) within one year of the date of the issuance of the certificate or the certificate becomes null and void. This provision shall not be construed to require deployment of cable or video service throughout the municipalities or the unincorporated areas of the counties described in subsection (B)(2).

 (C) Within five days of receipt of an application or amended application, the Secretary of State must notify each affected municipality and county of its receipt of the application or amended application and must request from each affected municipality and county: (1) the franchise fee rate imposed on the incumbent cable service provider, if any, as of the date of the application or amended application; (2) the number of public, educational, and governmental (PEG) access channels the municipality or county has activated under the incumbent cable provider’s franchise agreement as of the date of the application or amended application; and (3) whether the municipality or county consents to the state‑issued certificate of franchise authority sought in the application or amended application and, if such consent is denied, an explanation of the reasons for the denial of the requested consent. The notification must contain a copy of the application of the cable or video service provider including the description of the area to be served.

 (D) A municipality or county must respond to a request issued by the Secretary of State pursuant to subsection (C) within sixty‑five days of the date of such request. If a municipality or county does not timely respond with the franchise fee rate imposed on the incumbent cable service provider, if any, as of the date of the application or amended application, the franchise fee rate for the applicant in such municipality or county shall be two percent of gross revenue until the county or municipality provides a response and the Secretary of State issues an amended certificate of franchise authority containing a franchise fee in compliance with Section 58‑12‑330. If a municipality or county does not timely respond with the number of PEG access channels the municipality or county has activated under the incumbent cable provider’s franchise agreement as of the date of the application or amended application or with a statement that it has not activated any PEG access channels under the incumbent cable provider’s franchise agreement as of such date, the applicant shall not be required to provide any PEG access channels to the municipality or county until the municipality or county provides a response and the Secretary of State issues an amended certificate of franchise authority containing the number of PEG access channels to be provided to the municipality or county in compliance with Section 58‑12‑370. If a municipality or county denies consent or does not timely indicate its unconditional consent to the state‑issued certificate of franchise authority sought in the application or amended application, the Secretary of State shall deny the application or amended application with regard to that municipality or county and shall note on the notice of denial that the reason for the denial was the refusal of the applicable municipality or county to grant consent. If the applicant takes the position that the denial of the application or amended application is actionable, it may seek any appropriate relief under state or federal law in state or federal court, and if the applicant takes the position that the denial of consent by the municipality or county is actionable, it may add the municipality or county denying consent as a party to such action. If the Secretary of State denies the application or amended application under the provisions of this subsection and the affected municipality or county subsequently indicates its unconditional consent to the state‑issued certificate of franchise authority sought in the application or amended application, the Secretary of State must promptly issue an amended certificate of franchise authority that includes such municipality or county.

 (E) Within eighty days after making the request described in subsection (C), the Secretary of State shall issue the applicant a certificate of franchise authority to operate as a cable or video service provider and the certificate shall contain the following:

 (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 along, across, or on public rights‑of‑way in the delivery of that service, 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) the franchise fee rate for each municipality or county described in the application in compliance with Section 58‑12‑330; and

 (4) the number of public, educational, and governmental access channels to be provided upon request to each municipality or county described in the application, in compliance with Section 58‑12‑370.

 (F) The certificate of franchise authority issued by the Secretary of State is fully transferable to a successor in interest to the applicant to which it is initially granted, provided that the successor in interest files with the Secretary of State an affidavit that complies with the requirements of subsection (B). A notice of transfer must be filed with the Secretary of State and the affected municipalities or counties within ten days of the completion of the transfer. The Secretary of State is neither required nor authorized to act upon the notice.

 (G) A holder of a state‑issued certificate of franchise authority shall comply with any applicable federal law or regulation addressing a‑la‑carte programming options.

 (H) The certificate of state franchise authority issued pursuant to this article may be terminated by the cable or video service provider by submitting written notice of the termination to the Secretary of State and the affected municipalities or counties. The Secretary of State is neither required nor authorized to act upon such notice.

 (I) The state‑issued certificate of franchise authority issued pursuant to this article supersedes and is in lieu of any franchise authority or approval required by Sections 58‑12‑10 and 58‑12‑30.

 (J) The Secretary of State shall keep for public examination a record of all certificates applied for or granted pursuant to the provisions of this article.

 (K) The holder of a state‑issued certificate of franchise authority shall give written notification to a municipality or county of the date on which it will actually begin providing service in any part of such municipality or county.

HISTORY: 2006 Act No. 288, Section 4, eff May 23, 2006; 2007 Act No. 8, Section 2, eff March 30, 2007.

**SECTION 58‑12‑320.** Predecessor and successor entities.

 (A) For purposes of this article, a cable service provider is deemed to have or have had a franchise to provide cable service in a specific municipality or unincorporated areas of a county if any predecessor entity of the cable service provider has or, after July 1, 2005, had a cable franchise agreement granted by that specific municipality or county.

 (B) The terms “predecessor” or “successor entity” in this section shall include, but not be limited to, an entity receiving, obtaining, or operating under a municipal or county cable franchise through merger, sale, assignment, restructuring, or any other type of transaction.

HISTORY: 2006 Act No. 288, Section 4, eff May 23, 2006; 2007 Act No. 8, Section 2, eff March 30, 2007.

**SECTION 58‑12‑325.** Transfer from county or municipality issued franchise authority to state issued franchise authority.

 At the time any certificate of franchise authority is issued by the Secretary of State, the Secretary of State immediately shall post information relating to the certificate, specifically including all municipalities and counties described pursuant to Section 58‑12‑310(B)(2). At any time on or after the date when the holder of a state‑issued certificate of franchise authority gives notice, as required by Section 58‑12‑310(K), that it is beginning to offer cable or video service in a given municipality or county, any cable service provider serving such municipality or county shall have the option to terminate existing franchises previously issued by such municipality or county and instead offer cable or video service in such municipality or county under a certificate of franchise authority that the Secretary of State shall issue in accordance with the requirements of Section 58‑12‑310. A cable service provider exercising its termination option shall file a statement of termination with the Secretary of State on a form as required by the Secretary of State and submit copies of such filing with any affected municipalities or counties. Termination of existing franchises is effective immediately upon issuance of a certificate of franchising authority by the Secretary of State granting authority to provide cable or video service in the described municipalities and counties. Upon termination of existing franchises as provided in this section, the cable or video service provided by the provider exercising its termination option is governed by the provisions of this article in those municipalities and counties where the franchises have been terminated. The termination option of this section applies only with respect to municipalities and counties which have been described pursuant to Section 58‑12‑310(B)(2) by a holder of a state certificate of franchise authority and not with respect to franchises issued by other municipalities and counties.

HISTORY: 2006 Act No. 288, Section 4, eff May 23, 2006; 2007 Act No. 8, Section 2, eff March 30, 2007.

**SECTION 58‑12‑330.** Payments to municipalities and counties.

 (A) Except as otherwise provided in Section 58‑12‑310, the holder of a state‑issued certificate of franchise authority must pay a municipality or county a franchise fee equal to a specified percentage of the holder’s gross revenues received from (1) the provision of cable or video service to subscribers located within the municipality or unincorporated areas of the county, and (2) from advertising and home shopping services as allocated under subsection (B) below. The specified percentage, hereafter referred to as the “state‑issued certificate holder’s franchise fee rate”, must not exceed the lesser of the incumbent cable service provider’s franchise fee rate imposed by the municipality or county, if any, or five percent of the holder’s gross revenues as defined in this article. No change to the franchise fee set forth in a state‑issued certificate of franchise authority is effective earlier than forty‑five days after the Secretary of State provides the holder of the state‑issued certificate of franchise authority written notice of the change.

 (B) The amount of a cable or video service provider’s nonsubscriber revenues from advertising and home shopping services that is allocable to a municipality or unincorporated area of a county is equal to the total amount of such cable or video service provider’s revenue received from advertising and home shopping services multiplied by the ratio of the number of subscribers in such municipality or in the unincorporated area of such county on the preceding January first to the total number of subscribers receiving cable or video service from such cable or video service provider on that date.

 (C) A municipality or county promptly must notify the Secretary of State of any change to its cable or video service franchise fee rate, and no such change shall be effective as to the holder of a state‑issued certificate of franchise authority earlier than forty‑five days after the Secretary of State provides the holder written notice of the change.

 (D) The holder of a state‑issued certificate of franchise authority must quarterly pay the amount of the franchise fees payable under this section to the affected municipalities and counties. Each quarterly payment must be made within thirty days after the end of the quarter for the preceding calendar quarter. Each payment must be accompanied by a statement showing, for the quarter covered by the payment, the state‑issued certificate holder’s gross revenues from cable or video service attributable to the municipality or unincorporated areas of the county that impose a state‑issued certificate holder’s franchise fee, the applicable state‑issued certificate holder’s franchise fee rate for the municipality or county, and the portion of the aggregate payment attributable to the municipality or county. Any supporting statements are confidential and are exempt from disclosure under any provision of state law.

 (E) The holder of a state‑issued certificate of franchise authority may designate that portion of a subscriber’s bill attributable to a franchise fee imposed pursuant to this article and may recover such amount from the subscriber as a separate item on the bill.

 (F) No municipality or county shall levy a tax, license, fee, or other assessment on a cable or video service provider other than the collection of the franchise fee authorized by this section or a cable franchise fee imposed upon a cable service provider before January 1, 2006; provided, that nothing in this article shall restrict the right of a municipality or county to impose ad valorem taxes, service fees, sales taxes, or other taxes and fees lawfully imposed on other businesses within the municipality or county.

 (G) The franchise fee allowed by this section is in lieu of a permit fee, encroachment fee, degradation fee, or other fee assessed on a holder of a state‑issued certificate of franchise authority for its occupation of or work within the public rights‑of‑way with regard to the provision of cable or video service.

HISTORY: 2006 Act No. 288, Section 4, eff May 23, 2006; 2007 Act No. 8, Section 2, eff March 30, 2007.

**SECTION 58‑12‑340.** Review of cable or video service provider’s business records by municipality or county.

 (A) A municipality or county may, upon reasonable written request but no more than once per year and only once with respect to any given period, review the business records of a cable or video service provider to the extent necessary to ensure payment of the franchise fee in accordance with Section 58‑12‑330. Within ninety days after receipt of a request by a county or municipality for business records pursuant to this subsection, a holder of a state‑issued certificate of franchise authority must inform the requesting county or municipality of the status of the request. Thereafter, the parties must, upon request by either party, work in good faith to develop a mutually acceptable schedule for the provision of such records.

 (B) No municipality, county, or holder of a state‑issued certificate of franchise authority may bring any suit arising out of or relating to the amounts allegedly due to a municipality or county under Section 58‑12‑330, unless that entity has first initiated good‑faith settlement discussions in accordance with the negotiation and mediation procedures set forth in subsection (C). All negotiations and mediation pursuant to this section must be confidential and must be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and South Carolina Rules of Evidence.

 (C) A municipality, county, or holder of a state‑issued certificate of franchise authority shall give the other party written notice of any dispute not resolved in the normal course of business. At the request of the municipality or county, the parties shall participate in mediation governed by procedures established in the South Carolina Circuit Court Alternative Dispute Resolution Rules that are in effect at the time for the State or for any portion of the State. Representatives of both parties, with authority to settle the dispute, must meet at a mutually agreeable time and place within thirty calendar days after receipt of such notice, and thereafter as often as reasonably deemed necessary, to exchange relevant information and attempt to resolve the dispute. If the dispute has not been resolved within sixty calendar days after receipt of the notice, either the municipality or the county may initiate nonbinding mediation. The mediation must be conducted in accordance with the South Carolina Circuit Court Alternative Dispute Resolution Rules that are in effect at the time for the State or for any portion of the State and must take place at a mutually agreeable time and location.

 (D) Any suit with respect to a dispute arising out of or relating to the amount of the franchise fee allegedly due to a municipality or county under Section 58‑12‑330 must be filed by the municipality or county seeking to recover an additional amount alleged to be due, or by the holder of a state‑issued certificate of franchise authority seeking a refund of an alleged overpayment, in a court of competent jurisdiction within three years following the end of the quarter to which the disputed amount relates; provided, however, that the time period may be extended by written agreement between the holder of a state‑issued certificate of franchise authority and a municipality or county. Good faith participation in and completion of the negotiation and mediation procedures set forth in subsection (C) shall be a condition precedent to proceeding with the suit beyond its filing to toll the limitations period set forth in this subsection.

 (E) Each party shall bear its own costs incurred in connection with any and all of the activities and procedures set forth in this section. A municipality or county may not employ, appoint, or retain any person or entity for compensation that is dependent in any manner upon the outcome of any such audit, including, without limitation, the audit findings or the recovery of fees or other payment by the municipality or county. A person or entity may not solicit or accept compensation dependent in any manner upon the outcome of any such audit, including, without limitation, the audit findings or the recovery of fees or other payment by the municipality or county.

 (F) A municipality or county may contract with a third party for the collection of the franchise fees and enforcement of the provisions of this chapter.

HISTORY: 2006 Act No. 288, Section 4, eff May 23, 2006; 2007 Act No. 8, Section 2, eff March 30, 2007.

**SECTION 58‑12‑350.** Imposition of cable system or video service network construction or cable or video service deployment build‑out requirements.

 No franchising authority, state agency, or political subdivision of the State may impose any cable system or video service network construction or cable or video service deployment build‑out requirements on a holder of a state‑issued certificate of franchise authority.

HISTORY: 2006 Act No. 288, Section 4, eff May 23, 2006; 2007 Act No. 8, Section 2, eff March 30, 2007.

**SECTION 58‑12‑360.** Customer service requirements.

 The holder of a state‑issued certificate of franchise authority must comply with customer service requirements that are no more restrictive than the standards in 47 CFR 76.309(c). The South Carolina Department of Consumer Affairs must receive complaints from customers of the holder of a state‑issued certificate of franchise authority in accordance with Section 37‑6‑117. Contact information for the Department of Consumer Affairs must be printed on the customer’s bill.

HISTORY: 2006 Act No. 288, Section 4, eff May 23, 2006; 2007 Act No. 8, Section 2, eff March 30, 2007.

**SECTION 58‑12‑370.** Public, educational, and governmental (PEG) access channels; utilization requirements; interconnection with incumbent cable provider.

 (A) Not later than one hundred twenty days after a request by a municipality or county, the holder of a state‑issued certificate of franchise authority shall provide each municipality or county in which it provides cable or video service with capacity in its network to allow PEG access channels for noncommercial programming consistent with this section.

 (B) Except as otherwise provided in Section 58‑12‑310, the holder of a state‑issued certificate of franchise authority shall provide the same number of PEG access channels a municipality or county has activated under the incumbent cable service provider’s franchise agreement as of the date of the holder’s application or amended application for a state‑issued certificate of franchise authority. If a municipality or county did not have PEG access channels as of the date of the holder’s application or amended application for a state‑issued certificate of franchise authority, the cable or video service provider shall furnish, upon written request by that municipality or county, up to three PEG channels, one of which may be used by the municipality or county without restrictions relating to repeat programming. No cable or video service provider shall be required to provide more than three PEG access channels on its cable system or video service network. Municipalities, counties, and cable or video service providers must cooperate in the sharing of channel capacity to provide PEG access for municipalities and counties served by the cable system or video service network.

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

 (D) If a municipality or county has not utilized the maximum number of additional access channels as permitted by subsection (B), access to the additional channel capacity allowed in subsection (B) may be provided upon a one‑hundred‑twenty‑day request only if the municipality or county can demonstrate that all activated PEG channels are “substantially utilized”. PEG channels must be considered “substantially utilized” when eight hours are programmed on that channel each calendar day. In addition, at least forty percent of the eight hours of programming for each business day on average over each calendar quarter must be nonrepeat programming.

 (E) The operation of any PEG access channel provided pursuant to this section is the responsibility of the municipality, the county, or the Educational Television Commission receiving the benefit of the channel, and the holder of a state‑issued certificate of franchise authority bears only the responsibility for the transmission of the channel. The holder of a state‑issued certificate of franchise authority must be responsible for providing the connectivity to each PEG access channel distribution point up to the first two hundred feet.

 (F) The municipality, the county, or the Educational Television Commission shall ensure that all transmissions of content and programming provided by or arranged by them to be transmitted over a PEG channel by a holder of a state‑issued certificate of franchise authority are provided and submitted to the cable or video service provider in a manner or form that is capable of being accepted and transmitted by the provider over its network without further alteration or change in the content or transmission signal, and which is compatible with the technology or protocol utilized by the cable or video service provider to deliver its cable or video services.

 (G) Where technically feasible, the holder of a state‑issued certificate of franchise authority and an incumbent cable service provider must use reasonable efforts to interconnect their cable systems or video service networks, or both, on mutually acceptable and reasonable terms for the purpose of providing PEG programming. Interconnection may be accomplished by direct cable microwave link, satellite, or other reasonable method of connection. Holders of a state‑issued certificate of franchise authority and incumbent cable service providers shall negotiate in good faith, and incumbent cable service providers may not unreasonably withhold interconnection of PEG channels.

 (H) A holder of a state‑issued certificate of franchise authority is not required to interconnect for, or otherwise to transmit, PEG content that is branded with the logo, name, or other identifying marks of another cable or video service provider, and a municipality or county may require a cable or video service provider to remove its logo, name, or other identifying marks from PEG content that is to be made available to another provider.

HISTORY: 2006 Act No. 288, Section 4, eff May 23, 2006; 2007 Act No. 8, Section 2, eff March 30, 2007.

**SECTION 58‑12‑380.** Denial of access to service based on income in service area; filing of complaint.

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

 (B) For purposes of determining whether a holder of a state‑issued certificate of franchise authority has violated Section 58‑12‑380(A), cost, density, distance, and technological or commercial limitations must be taken into account, and the holder of the state‑issued certificate shall have a reasonable time to deploy its service. Use of alternative technologies that provide different or comparable content, service, and functionality may not be considered a violation of this section. The inability to serve a potential residential subscriber because a holder of a state‑issued certificate of franchise authority is prohibited from placing its own facilities in a building or property may not be found to be a violation of this section. This section may not be construed as authorizing any build‑out requirements on a holder of a state‑issued certificate of franchise authority.

 (C) Any potential residential subscriber or group of residential subscribers within a municipality or county described pursuant to Section 58‑12‑310(B)(2) who believe they are being denied access to services in violation of subsection (A) may file a complaint with the Secretary of State, along with a clear statement of the facts and the information supporting the complaint. At the request of the potential residential subscriber or group of residential subscribers, the parties shall participate in mediation governed by procedures established in the South Carolina Circuit Court Alternative Dispute Resolution Rules that are in effect at the time for the State or for any portion of the State. If requested by the Secretary of State, the Attorney General must investigate the allegations contained in a complaint filed pursuant to this section, assist the Secretary of State in the preparation of a written determination required by this section, and represent the Secretary of State in any proceeding instituted pursuant to this section. Upon receipt of any such complaint, the Secretary of State or the Attorney General acting on behalf of the Secretary of State shall serve a copy of the complaint and supporting materials upon the subject cable or video service provider, which shall have sixty days after receipt of such information to submit a written answer and any other relevant information the provider wishes to submit to the Secretary of State in response to the complaint. If, after investigation of the allegations contained in the complaint, the Secretary of State determines based on the information submitted or gathered pursuant to such process that a material violation of subsection (A) has occurred, the Secretary of State or the Attorney General acting on behalf of the Secretary of State shall issue a written determination setting forth the basis for such findings and giving the cable or video service provider a reasonable time to cure such violation. If the cable or video service provider fails to cure the violation within the time permitted in the written determination, the Secretary of State may seek enforcement of the terms of the written determination in the circuit courts of this State or in any federal court of competent jurisdiction. A cable or video service provider that is found by the Secretary of State to be in violation of subsection (A) may challenge that determination in the circuit courts of this State or in any federal court of competent jurisdiction.

 (D) The Secretary of State must not withhold or deny an application for franchise authority due to an alleged violation of subsection (A).

HISTORY: 2006 Act No. 288, Section 4, eff May 23, 2006; 2007 Act No. 8, Section 2, eff March 30, 2007.

**SECTION 58‑12‑390.** Order to cure noncompliance.

 Should the holder of a state‑issued certificate of franchise authority be found by a court of competent jurisdiction to be in noncompliance with the requirements of this article, the court must order the holder of the state‑issued certificate of franchise authority, within a specified reasonable period of time, to cure the noncompliance.

HISTORY: 2006 Act No. 288, Section 4, eff May 23, 2006; 2007 Act No. 8, Section 2, eff March 30, 2007.

**SECTION 58‑12‑395.** County emergency preparedness and alert system responsibilities.

 Nothing in this article affects the ability of a county or municipality to carry out its emergency preparedness responsibilities pursuant to Section 25‑1‑450(2) or its emergency alert system responsibilities pursuant to 47 CFR Part 11.

HISTORY: 2006 Act No. 288, Section 4, eff May 23, 2006; 2007 Act No. 8, Section 2, eff March 30, 2007.

**SECTION 58‑12‑400.** Applicability of Article 2; educational television.

 (A) The following sections of Article 2, Chapter 12, Title 58 shall apply to a cable or video service provider who has been granted a state‑issued certificate of franchise authority under this article: Sections 58‑12‑20, 58‑12‑30(d) and (f), 58‑12‑60, 58‑12‑70, 58‑12‑110, and 58‑12‑130(A) and (C).

 (B) In addition to the above, each holder of a state‑issued certificate of franchise authority must make available one six megahertz channel if it is using analog transmission technology to deliver local broadcast television programming to subscribers over its network, or one standard digital channel if it is using digital technology for such purpose, for the transmissions of the Educational Television Commission.

 (C) The following sections of Article 2, Chapter 12 of Title 58 shall not apply to a cable or video service provider who has been granted a state‑issued certificate of franchise authority: Sections 58‑12‑10, 58‑12‑30(a), (b), (c), and (e), 58‑12‑40, 58‑12‑50, 58‑12‑80, 58‑12‑90, 58‑12‑100, 58‑12‑120, and 58‑12‑130(B).

HISTORY: 2006 Act No. 288, Section 4, eff May 23, 2006; 2007 Act No. 8, Section 2, eff March 30, 2007.

ARTICLE 4

Television Programming Protection Act

**SECTION 58‑12‑500.** Blocking programs not subscribed to upon request; notice; delivery of channels on promotional basis.

 (A) Except as provided in subsection (C), a cable or video service provider that uses digital transmission technology to deliver cable or video programming must completely block all video and audio on any channel that a subscriber has not purchased at no charge to the subscriber.

 (B) A cable or video service provider that uses analog transmission technology to deliver cable or video programming must provide notice to its subscribers that informs the subscriber that, upon request by the subscriber, the cable or video service provider will block all video and audio on any channel that the subscriber has not purchased at no charge to the subscriber. The notice must be given to current subscribers by a bill insert, by separate mailing, or by electronic notice. Within five days of receiving a subscriber’s request, the cable or video service provider must block all video and audio on any channel that the subscriber has not purchased. The time frames stated herein shall not apply if the cable or video service provider is unable to comply with them due to circumstances beyond the cable or video service provider’s control.

 (C) A cable or video service provider that intends to deliver channels to its subscribers on a promotional basis shall provide its subscribers advanced notice of its intent to do so and shall inform them that, upon a subscriber’s request, all video and audio on such channels can be completely blocked. Unless a subscriber makes such a request in the manner prescribed by the provider, a cable or video service provider may, on a promotional basis, deliver to a subscriber one or more channels the subscriber has not purchased.

HISTORY: 2008 Act No. 182, Section 2, eff upon approval (became law without the Governor’s signature on February 28, 2008).

Editor’s Note

2008 Act No. 182, Section 1, provides as follows:

“This act is known and may be cited as the Television Programming Protection Act.”

**SECTION 58‑12‑510.** Transmission of blocked channel due to equipment failure; time frame for blocking upon notification.

 When a subscriber notifies the cable or video service provider that he wishes to block video and audio and one or more blocked channels are transmitted due to equipment failure of the cable or video service provider, the cable or video service provider that uses digital transmission technology to deliver cable or video programming must immediately block the channels. When a subscriber notifies the cable or video service provider that he wishes to block video and audio and one or more blocked channels are transmitted due to equipment failure of the cable or video service provider, the cable or video service provider that uses analog transmission technology to deliver cable or video programming must block the channel within forty‑eight hours after the subscriber notifies the cable or video service provider of the failed blocking. The time frames stated herein shall not apply if the cable or video service provider is unable to comply with them due to circumstances beyond the cable or video service provider’s control.

HISTORY: 2008 Act No. 182, Section 2, eff upon approval (became law without the Governor’s signature on February 28, 2008).