

Licensing and Regulating Cable Television Systems

This Act establishes a procedure by which cable operators may obtain authorization to operate cable systems in localities. The new procedure provides for localities to grant ordinance cable franchises as an alternative to negotiated cable franchises. Ordinance cable franchises may be requested by certified providers of telecommunications services with previous consent to use a locality's rights-of-way, after requesting to negotiate a cable franchise agreement. Upon receipt of an application for an ordinance cable franchise, the locality shall adopt necessary ordinances within 120 days. A locality granting an ordinance franchise may, if it currently has fewer than three public, educational or governmental (PEG) channels, obtain up to three PEG channels from all cable operators. A locality that has approved a cable franchise in the 12 months preceding July 1, 2006, is exempted from provisions of this measure until an existing franchise expires.

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Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act is entitled “An Act Relating to Licensing And
2 Regulating Cable Television Systems.”

3

4

Section 2. [*Definitions.*]

5

(A) As used in this Act:

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“Act” means the Communications Act of 1934.

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“Affiliate,” in relation to any person, means another person who owns or controls, is
8 owned or controlled by, or is under common ownership or control with, such person.

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“Basic service tier” means the service tier that includes the retransmission of local
10 television broadcast channels and public, educational, and governmental channels required to be
11 carried in the basic tier.

12

“Cable operator” means any person or group of people that provides cable service over a
13 cable system and directly or through one or more affiliates owns a significant interest in such
14 cable system or otherwise controls or is responsible for, through any arrangement, the
15 management and operation of a cable system. Cable operator does not include a provider of
16 wireless or direct-to-home satellite transmission service.

17

“Cable service” means the one-way transmission to subscribers of video programming or
18 other programming service, and subscriber interaction, if any, which is required for the selection
19 or use of such video programming or other programming service. Cable service does not include
20 any video programming provided by a commercial mobile service provider defined in 47 U.S.C. §
21 332(d).

22

“Cable system” or “cable television system” means any facility consisting of a set of
23 closed transmission paths and associated signal generation, reception, and control equipment that
24 is designed to provide cable service that includes video programming and that is provided to
25 multiple subscribers within a community, except that such definition shall not include

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(i) a system that serves fewer than [20] subscribers;

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(ii) a facility that serves only to retransmit the television signals of [one or more]

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television broadcast stations;

29 (iii) a facility that serves only subscribers without using any public right-of-way;
30 (iv) a facility of a common carrier that is subject, in whole or in part, to the
31 provisions of Title II of the Communications Act of 1934, 47 U.S.C. § 201 et seq., except that
32 such facility shall be considered a cable system to the extent such facility is used in the
33 transmission of video programming directly to subscribers, unless the extent of such use is solely
34 to provide interactive on-demand services;

35 (v) any facilities of any electric utility used solely for operating its electric
36 systems;

37 (vi) any portion of a system that serves fewer than [50] subscribers in any locality,
38 where such portion is a part of a larger system franchised in an adjacent locality; or an open video
39 system that complies with § 653 of Title VI of the Communications Act of 1934, as amended, 47
40 U.S.C. § 573.

41 “Certificated provider of telecommunications services” means a person holding a
42 certificate issued by the [State Corporation Commission] to provide local exchange telephone
43 service.

44 “Franchise” means an initial authorization, or renewal thereof, issued by a franchising
45 authority, including a locality or the [Commonwealth Transportation Board], whether such
46 authorization is designated as a franchise, permit, license, resolution, contract, certificate,
47 agreement, or otherwise, that authorizes the construction or operation of a cable system, a
48 telecommunications system, or other facility in the public rights-of-way. A negotiated cable
49 franchise is granted by a locality after negotiation with an applicant pursuant to section 3 of this
50 Act. An ordinance cable franchise is granted by a locality when an applicant provides notice
51 pursuant to section 4 of this Act that it will provide cable service in the locality.

52 “Force majeure” means an event or events reasonably beyond the ability of cable operator
53 to anticipate and control. “Force majeure” includes, but is not limited to, acts of God, incidences
54 of terrorism, war or riots, labor strikes or civil disturbances, floods, earthquakes, fire, explosions,
55 epidemics, hurricanes, tornadoes, governmental actions and restrictions, work delays caused by
56 waiting for utility providers to service or monitor or provide access to utility poles to which cable
57 operator's facilities are attached or to be attached or conduits in which cable operator's facilities
58 are located or to be located, and unavailability of materials or qualified labor to perform the work
59 necessary.

60 “Gross revenue” means all revenue, as determined in accordance with Generally Accepted
61 Accounting Principles, that is actually received by the cable operator and derived from the
62 operation of the cable system to provide cable services in the franchise area; however, in an
63 ordinance cable franchise “gross revenue” shall not include:

64 (i) refunds or rebates made to subscribers or other third parties;

65 (ii) any revenue which is received from the sale of merchandise over home
66 shopping channels carried on the cable system, but not including revenue received from home
67 shopping channels for the use of the cable service to sell merchandise;

68 (iii) any tax, fee, or charge collected by the cable operator and remitted to a
69 governmental entity or its agent or designee, including without limitation a local public access or
70 education group;

71 (iv) program launch fees;

72 (v) directory or Internet advertising revenue including, but not limited to, yellow
73 page, white page, banner advertisement, and electronic publishing;

74 (vi) a sale of cable service for resale or for use as a component part of or for the
75 integration into cable services to be resold in the ordinary course of business, when the reseller is
76 required to pay or collect franchise fees or similar fees on the resale of the cable service;

77 (vii) revenues received by any affiliate or any other person in exchange for
78 supplying goods or services used by the cable operator to provide cable service; and

79 (viii) revenue derived from services classified as noncable services under federal
80 law, including, without limitation, revenue derived from telecommunications services and
81 information services, and any other revenues attributed by the cable operator to noncable services
82 in accordance with rules, regulations, standards, or orders of the Federal Communications
83 Commission.

84 “Interactive on-demand services” means a service providing video programming to
85 subscribers over switched networks on an on-demand, point-to-point basis, but does not include
86 services providing video programming prescheduled by the programming provider.

87 “Ordinance” includes a resolution.

88 “Transfer” means any transaction in which:

89 (i) an ownership or other interest in the cable operator is transferred, directly or
90 indirectly, from one person or group of people to another person or group of people, so that
91 majority control of the cable operator is transferred; or

92 (ii) the rights and obligations held by the cable operator under the cable franchise
93 granted under this Act are transferred or assigned to another person or group of people. However,
94 notwithstanding clauses (i) and (ii) of the preceding sentence, a transfer of the cable franchise
95 shall not include:

96 (a) transfer of an ownership or other interest in the cable operator to the
97 parent of the cable operator or to another affiliate of the cable operator;

98 (b) transfer of an interest in the cable franchise granted under this Act or
99 the rights held by the cable operator under the cable franchise granted under this Act to the parent
100 of the cable operator or to another affiliate of the cable operator;

101 (c) any action that is the result of a merger of the parent of the cable
102 operator;

103 (d) any action that is the result of a merger of another affiliate of the cable
104 operator; or

105 (e) a transfer in trust, by mortgage, or by assignment of any rights, title, or
106 interest of the cable operator in the cable franchise or the system used to provide cable in order to
107 secure indebtedness.

108 “Video programming” means programming provided by, or generally considered
109 comparable to, programming provided by a television broadcast station.

110 (B) All terms used herein, unless otherwise defined, shall have the same meaning as set
111 forth in Title VI of the Communications Act of 1934, 47 U.S.C. § 521 et seq. In addition,
112 references in this Act to any federal law shall include amendments thereto as enacted.

113
114 Section 3. [*Authority to Grant Negotiated Cable Franchises and Regulate Cable Systems.*]

115 (A) A locality may grant a negotiated cable franchise in accordance with Title VI of the
116 Communications Act of 1934, as amended, 47 U.S.C. § 521 et seq., and this Act.

117 (B) A locality may, by ordinance, exercise all regulatory powers over cable systems
118 granted by the Communications Act of 1934, except as limited by this Act. These regulatory
119 powers shall include the authority:

120 (i) to enforce customer service standards in accordance with the Act;

121 (ii) to enforce more stringent standards as agreed upon by the cable operator
122 through the terms of a negotiated cable franchise; and

123 (iii) to regulate the rates for basic cable service in accordance with the Act.

124 (C) A locality, however, shall not regulate cable operators, cable systems, or other
125 facilities used to provide video programming through the adoption of ordinances or regulations:

126 (i) that are more onerous than ordinances or regulations adopted for existing cable
127 operators;

- 128 (ii) that unreasonably prejudice or disadvantage any cable operator, whether
129 existing or new; or
130 (iii) that are inconsistent with any provision of federal law or this Act.
131

132 Section 4. [*Ordinance Cable Franchises.*]

133 (A) This section shall govern the procedures by which a locality may grant ordinance
134 cable franchises.

135 (B) An Ordinance Cable Franchise, which shall have a term of [15] years, may be
136 requested by:

137 (i) a certificated provider of telecommunications services with previous consent to
138 use the public rights-of-way in a locality through a franchise;

139 (ii) a certificated provider of telecommunications services that lacked previous
140 consent to provide cable service in a locality but provided telecommunications services over
141 facilities leased from an entity having previous consent to use of the public rights-of-way in such
142 locality through a franchise; or

143 (iii) a cable operator with previous consent to use the public rights-of-way to
144 provide cable service in a locality through a franchise and who seeks to renew its existing cable
145 franchise pursuant to section 13 of this Act as an Ordinance Cable Franchise. A cable operator
146 with previous consent to use the public rights-of-way to provide cable service in a locality
147 through a franchise may opt into the new terms of an Ordinance Cable Franchise under section 9
148 of this Act.

149 (C) In order to obtain an Ordinance Cable Franchise, an applicant shall first file with the
150 chief administrative officer of the locality from which it seeks to receive such Ordinance Cable
151 Franchise a request to negotiate the terms and conditions of a negotiated cable franchise under
152 section 3 of this Act. An applicant shall request and make itself available to participate in cable
153 franchise negotiations with the locality from which it seeks to receive negotiated cable franchise
154 at least [45] calendar days prior to filing a notice electing an Ordinance Cable Franchise; this
155 prerequisite shall not be applicable if a locality refuses to engage in negotiations at the request of
156 an applicant or if the applicant already holds a negotiated cable franchise from the locality.
157 Thereafter, an applicant, through its president or chief executive officer, shall file notice with the
158 locality that it elects to receive an Ordinance Cable Franchise at least [30] days prior to offering
159 cable in such locality. The notice shall be accompanied by a map or boundary description
160 showing the initial service area in which the cable operator intends to provide cable service in the
161 locality within the [three-year] period required for an initial service area and the area in the
162 locality in which the cable operator has its telephone facilities. The map or boundary description
163 of the initial service areas may be amended by the cable operator by filing with the locality a new
164 map or boundary description of the initial service area.

165 (D) The cable operator shall assure that access to cable services is not denied to any group
166 of potential residential cable subscribers because of the income of the residents of the local area
167 in which such group resides. The local franchising authority shall have the right to monitor and
168 inspect the deployment of cable services and the cable operator shall submit [semiannual]
169 progress reports detailing the current provision of cable services in accordance with the
170 deployment schedule and its new service area plans for the next [six] months. The failure to
171 correct or remedy any material deficiencies shall be subject to the same remedies as contained in
172 the cable television franchise of the existing cable operator as that franchise existed at the time of
173 the grant of the ordinance franchise.

174 (E) The locality from which the applicant seeks to receive an ordinance cable franchise
175 shall adopt any ordinance requiring adoption under this Act within [120 days] of the applicant
176 filing the notice required in subsection C. Any ordinance adopted under this section that relates to

177 a cable operator's provision of cable service shall apply to such cable operator retroactively to the
178 date on which the cable operator began to offer cable service in the locality pursuant to this Act.

179 (F) Notice of any ordinance that requires a public hearing shall be advertised once a week
180 for two successive weeks in a newspaper having general circulation in the locality. The
181 advertisement shall include a statement that a copy of the full text of the ordinance is on file in the
182 office of the clerk of the locality. All costs of such advertising shall be assessed against the
183 operator or applicant.

184 (G) If the governing body of any town adopts an ordinance pursuant to the provisions of
185 this Act, such town shall not be subject to any ordinance adopted by the county within which such
186 town lies.

187

188 Section 5. [*Regulating Fees, Rates And Services; Penalties.*]

189 (A) Upon receiving a notice requesting an ordinance cable franchise pursuant to section 4
190 of this Act, a locality shall adopt or maintain one or more ordinances that govern a cable operator
191 who provides cable service under an ordinance cable franchise. The requirements of any specific
192 provision in any such ordinance shall not exceed the requirements imposed in the same provision,
193 if any, in any existing cable franchise within the locality. Such ordinance or ordinances, which
194 shall be adopted after a public hearing, shall:

195 (i) Require a cable operator to provide the locality with access to a number of
196 public, educational, and governmental access channels, [equal to the lowest number of such
197 channels provided by any other cable operator in the same franchise area of the locality]. If the
198 existing cable operator provides less than [three] such public, educational, and governmental
199 access channels pursuant to a franchise agreement, the locality may require each cable operator to
200 provide up to [three] such channels. Any additional channels provided subject to this provision
201 shall be subject to the reclamation formula set forth below. In addition, a locality may, by
202 ordinance adopted after a public hearing, require a cable operator to interconnect with any other
203 cable operator to ensure the carriage of required public, educational, and governmental access
204 channels; if the new cable operator and all existing cable operators cannot agree to an
205 interconnection agreement within [180] days of a request to interconnect by the new cable
206 operator, then the locality is authorized to determine an interconnection point. The locality or its
207 designee shall assume responsibility for management, operation, and programming of such
208 channels. A locality that substantially utilizes its existing public, educational, and governmental
209 access channels may require a reasonable number of additional public, educational, and
210 governmental access channels by the enactment of an ordinance, after a public hearing, so long as
211 the ordinance applies equally to all providers of cable service within a franchise area, the total
212 number of additional public, educational, and governmental access channels does not exceed
213 [three] channels in the basic service tier, and the total number of public, educational, and
214 governmental access channels shall not exceed [seven] channels in the aggregate.
215 Notwithstanding the foregoing, but consistent with federal law, the locality and a cable operator
216 may enter into written agreements for the carriage of additional public, educational, and
217 governmental access channels, including other arrangements for the carriage of such
218 programming. Any additional public, educational, and governmental access channel provided
219 pursuant to this Act that is not utilized by the locality for at least [eight] hours a day shall no
220 longer be made available to the locality, but may be programmed at the cable operator's
221 discretion. At such time as the locality can certify to the cable operator a schedule for at least
222 [eight] hours of daily programming for a period of [three] months, the cable operator shall restore
223 the previously re-allocated channel. For purposes of this subdivision, a public, educational, and
224 governmental access channel shall be considered to be substantially utilized when [12] hours are
225 programmed on that channel each calendar day; in addition, at least [33%] of the [12] hours of
226 programming for each business day on average over each calendar quarter must be nonrepeat

227 programming. For purposes of this subdivision, nonrepeat programming shall include the first
228 three videocastings of a program and shall include programming on other public, educational, and
229 governmental access channels in that locality. Programming for purposes of determining
230 substantial utilization shall not include an alphanumeric scroll, except that for purposes of
231 requiring one or more additional public, educational, and governmental access channels, an
232 alphanumeric scroll shall be included as programming on not more than one channel;

233 (ii) Require a cable operator to pay a franchise fee, remitted on the same schedule as
234 the least frequent schedule of an existing cable operator, but no more frequently than [quarterly],
235 calculated by multiplying a franchise fee percentage rate by the cable operator's gross revenues in
236 such franchise area for the remittance period; however, the franchise fee rate shall not exceed
237 [5%] of such gross revenues and not exceed the lowest franchise fee rate paid or provided by an
238 existing cable operator in the locality. The locality may further require that the cable operator
239 make the franchise fee payments to the locality no later than [45] days following the end of the
240 remittance period and require that the franchise fee payment be submitted with a brief report
241 prepared by a duly authorized representative of the cable operator showing the basis for the
242 computation. The locality shall have the right to reasonably require further supporting
243 information that does not exceed the information required to be provided by existing cable
244 operators in the locality;

245 (iii) Require a cable operator to pay a recurring fee, hereafter referred to as the PEG
246 Capital Fee, to support the capital costs of public, educational, and governmental channel
247 facilities, including institutional networks, provided that the PEG Capital Fee is equal to the
248 lowest recurring fee imposed on a per subscriber or a percentage of gross revenue basis and paid
249 by any existing cable operator in the locality to support the capital costs of such facilities. The
250 PEG Capital Fee shall only be imposed on a per subscriber or a percentage of gross revenue basis.
251 If the existing cable operator has paid a lump sum capital grant at award or renewal of its current
252 franchise, or is providing in-kind equipment in lieu of such a capital grant, to support public,
253 educational, and governmental channel facilities, including institutional networks, the locality, by
254 ordinance adopted after a public hearing, shall also impose an additional monthly recurring fee to
255 be known as the PEG Capital Grant Surcharge Fee on the new cable operator equal to the lower
256 of [1.5%] of the new cable operator's gross revenues derived from the operation of its cable
257 system in that locality or the lowest amount of capital contribution paid or provided in-kind, as
258 shown on the books of the cable operator, by an existing cable operator in the locality when such
259 capital contribution is amortized over the term of the existing cable operator's franchise and
260 divided by the number of subscribers or annual gross revenue of the existing cable operator as
261 shown on its most recent report to the locality, depending on recovery methodology chosen by the
262 locality. Both the PEG Capital Fee and the PEG Capital Grant Surcharge Fee may only be
263 collected by the locality for the remainder of the shortest remaining franchise term of any existing
264 cable operator in the locality; however, at the end of such term the locality may negotiate with all
265 cable operators to set a new, recurring fee to support the reasonable and necessary capital costs of
266 public, educational, and governmental channel facilities, including institutional networks, that
267 shall be imposed on all cable operators such that the fee applies equally to all of the customers of
268 all cable operators in the locality. At the end of such term, no cable operator shall be required to
269 provide any further in-kind public, educational, and governmental access channels, including
270 institutional network, support. If the cable operators and the locality cannot agree on such a
271 recurring capital cost fee, the locality, by ordinance adopted after a public hearing, may impose a
272 recurring fee, calculated on a per subscriber or percentage of gross revenue basis, to support the
273 reasonable and necessary capital costs of public, educational, and governmental channel facilities,
274 including institutional networks; however, such fee may not exceed the PEG Capital Fee
275 previously imposed on cable operators by the locality. Any and all fees permitted under this
276 subdivision shall be paid by the cable operator to the locality on the same schedule as franchise

277 fees are paid. Nothing in this subdivision shall be construed to permit a locality to require cable
278 operators to pay capital grants at the time of the grant or renewal of a franchise or otherwise
279 except for the PEG Capital Grant Surcharge Fee specifically provided in this subdivision;

280 (iv) Require a cable operator to comply with the customer service requirements
281 imposed by the locality pursuant to 47 U.S.C. § 552(a)(1) and this Act through the adoption of an
282 ordinance after a public hearing. Any customer service requirements imposed by the locality that
283 exceed the requirements established by the Federal Communications Commission under 47
284 U.S.C. § 552(b) shall not be designed so that the cable operator cannot also comply with any
285 other customer service requirements under state or federal law or regulation applicable to the
286 cable operator in its provision of other services over the same network used to provide cable
287 service, be no more stringent than the customer service requirements applied to other cable
288 operators in the franchise area, and be reasonably tailored to achieve appropriate customer service
289 goals based on the technology used by the cable operator to provide cable service;

290 (v) Adopt procedures by which it will enforce the provisions of this Act and the
291 applicable mandatory requirements of 47 U.S.C. §§ 521-573 and the regulations promulgated
292 thereunder. Such procedures shall require the locality to: (i) informally discuss the matter with the
293 cable operator in the event that the locality believes that a cable operator has not complied with
294 this Act or the applicable mandatory requirements of 47 U.S.C. §§ 521-573 and notify the cable
295 operator in writing of the exact nature of the alleged noncompliance if the discussions described
296 in the foregoing clause (i) do not lead to resolution of the alleged noncompliance. The cable
297 operator shall have [15] days from receipt of this written notice to:

298 (a) respond to the locality, if the cable operator contests, in whole or in
299 part, the assertion of noncompliance;

300 (b) cure such default; or

301 (c) in the event that, by the nature of default, such default cannot be cured
302 within the [15-day period], initiate reasonable steps to remedy such default and notify the locality
303 of the steps being taken and the projected date that they will be completed. The locality shall
304 schedule a public hearing in the event that the cable operator fails to respond to the written notice
305 pursuant to these procedures or in the event that the alleged default is not remedied within [30]
306 days of the date projected above if the locality intends to continue its investigation into the
307 default. The locality shall provide the cable operator at least [30] business days prior written
308 notice of such hearing, which will specify the time, place, and purpose of such hearing, and
309 provide the cable operator the opportunity to be heard;

310 (vi) Adopt a schedule of uniform penalties or liquidated damages that it may
311 impose upon any cable operator with an ordinance cable franchise when the locality determines
312 that the cable operator has failed to materially comply with customer service standards; carriage
313 of public, educational, and governmental channels; reporting requirements; or timely and full
314 payment of the franchise fee or the fee assessed for the provision of public, educational, or
315 governmental access channels, including institutional networks. Any penalty or liquidated
316 damage for any of the foregoing violations shall be the same penalty or liquidated damage already
317 established for a cable operator in the same franchise area, if any. In addition, a locality shall not
318 impose any penalty or liquidated damage adopted pursuant to this subdivision until the cable
319 operator has been afforded a reasonable cure period between the time the cable operator is
320 notified of the violation and the penalty or liquidated damage is imposed. A separate violation for
321 purposes of this Act and the ordinances passed to implement this Act as it pertains to customer
322 service standards shall be deemed to occur whenever the locality reasonably determines that a
323 separate customer service standard violation has occurred on one day; however, the cable
324 operator shall not be charged with multiple violations for a single act or event affecting one or
325 more subscribers on the same day. The locality may charge interest at the legal rate as set forth in

326 [insert citation] for any amounts due the locality by the cable operator in clause (iv) of this
327 subdivision that remain unpaid and undisputed;

328 (vii) Adopt procedures under which the locality may inspect and audit, upon [30]
329 days prior written notice, the books and records of the cable operator and recompute any amounts
330 determined to be payable under the ordinances adopted pursuant to this Act. The procedures
331 adopted by the locality shall not exceed the following requirements:

332 (a) the locality may require the cable operator to make available to the
333 locality all records reasonably necessary to confirm the accurate payment of fees;

334 (b) the locality may require the cable operator to bear the locality's
335 reasonable out-of-pocket audit expenses if the audit discloses an underpayment of more than [3%]
336 of any quarterly payment, but not less than [\$5,000];

337 (c) the locality may require the cable operator to pay any additional
338 undisputed amounts due to the locality as a result of the audit within [30] days following written
339 notice by the locality to the cable operator;

340 (d) in the event the cable operator disputes any underpayment discovered
341 as the result of an audit conducted by the locality, the locality shall work together with the cable
342 operator in good faith to promptly resolve such dispute;

343 (e) the locality shall provide that the cable operator and the locality
344 maintain all rights and remedies available at law regarding any disputed amounts;

345 (f) the locality shall have no more than [three] years from the time the
346 cable operator delivers a payment to provide a written, detailed objection to or dispute of that
347 payment, and if the locality fails to object to or dispute the payment within that time period, the
348 locality shall be barred from objecting to or disputing it after that time period; and

349 (g) the locality shall not audit a cable operator more frequently than every
350 [24] months;

351 (viii) Adopt reasonable reporting requirements for annual financial information
352 and quarterly customer service information that must be provided by a cable operator to the
353 locality so long as such information does not exceed the reporting requirements for any existing
354 cable operator in that locality;

355 (ix) Require cable operators to provide, without charge, within the area actually
356 served by the cable operator, one cable service outlet activated for basic cable service to each fire
357 station, public school, police station, public library, and any other local government building. The
358 ordinance shall apply equally to all providers of cable services in the locality, but shall not apply
359 in cases where it is not technically feasible for a cable operator to comply;

360 (x) Subject to section 7 of this Act, adopt requirements and procedures for the
361 management of the public rights-of-way that do not exceed the standards set forth in [insert
362 citation] and the construction of a cable system in the public rights-of-way;

363 (xi) Adopt the following allocation procedure if cable services subject to a
364 franchise fee, or any other fee determined by a percentage of the cable operator's gross revenues
365 in a locality, are provided to subscribers in conjunction with other services: the fee shall be
366 applied only to the value of these cable services, as reflected on the books and records of the
367 cable operator in accordance with rules, regulations, standards, or orders of the Federal
368 Communications Commission or the [State Corporation Commission], or generally accepted
369 accounting principles. Any discounts resulting from purchasing the services as a bundle shall be
370 reasonably allocated between the respective services that constitute the bundled transaction; and

371 (xii) Require cable operators to make cable service available to up to all of the
372 occupied residential dwelling units in the initial service area selected by cable operator within no
373 less than [three] years of the date of the grant of the franchise and no more than [65%] of the
374 residential dwelling units in the area in the locality in which the cable operator has its telephone
375 facilities, within no less than [seven] years of the date of the grant of the franchise.

376 Notwithstanding the foregoing provision, a cable operator shall not be required to make cable
377 service available:

- 378 (a) for periods of force majeure;
- 379 (b) for periods of delay caused by the locality;
- 380 (c) for periods of delay resulting from the cable operator's inability to
381 obtain authority to access rights-of-way in the service area;
- 382 (d) in areas where developments or buildings are subject to claimed
383 exclusive arrangements;
- 384 (e) in developments or buildings that the cable operator cannot access
385 under industry standard terms and conditions after good faith negotiation;
- 386 (f) in developments or buildings that the cable operator is unable to provide
387 cable service for technical reasons or that require facilities that are not available or cannot be
388 deployed on a commercially reasonable basis;
- 389 (g) in areas where it is not technically feasible to provide cable service due
390 to the technology used by the cable operator to provide cable service;
- 391 (h) in areas where the average occupied residential household density is
392 less than [30] occupied residential dwelling units per mile as measured in strand footage from the
393 nearest technically feasible point on the cable operator's active cable system (or such higher
394 average density number as may be contained in an existing cable operator's cable franchise); and
395 (i) when the cable operator's prior service, payment, or theft of service
396 history with a subscriber or potential subscriber has been unfavorable. Should, through new
397 construction, an area within the cable operator's service area meet the density requirement, a cable
398 operator shall, subject to the exclusions in this subdivision, provide cable service to such area
399 within [six] months of receiving notice from the locality that the density requirements have been
400 met. A locality may not require a cable operator using its telephone facilities to provide cable
401 service to provide any cable service outside of the area in the locality in which the cable operator
402 has its telephone facilities. During the [12-month] period commencing after the [seventh-year
403 anniversary date] of the grant of the franchise, a locality may, by ordinance adopted after a public
404 hearing in which the locality specifically finds that such a requirement is necessary to promote
405 competition in cable services within the locality, require the cable operator to make service
406 available to no more than [80%] of the residential dwelling units in the area in the locality in
407 which the cable operator has its telephone facilities within no less than [10] years of the date of
408 the grant of the franchise, subject to the exclusions in clauses (a) through (i) of this subdivision. If
409 the cable operator notifies the locality that it is unwilling to accept this additional service
410 availability requirement, the locality may, after notice and public hearing, terminate the cable
411 operator's ordinance cable franchise. The cable operator shall file a certificate at its [third and
412 seventh, and if applicable, tenth, anniversary dates] certifying its compliance with the foregoing
413 service requirements. For purposes of an ordinance cable franchise, the date of the grant of the
414 franchise shall be the date the notice required by section 4 of this Act is filed with the locality.
415 For purposes of a negotiated cable franchise, the date of the grant of the franchise shall be the
416 date the respective locality has granted a negotiated cable franchise pursuant to section 3 of this
417 Act.

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Section 6. [*Regulation of Rights-of-Way; Fees.*]

420 (A) To the extent that a franchised cable operator has been authorized to use the public
421 rights-of-way in a locality and is obligated to pay a franchise fee to such locality, such cable
422 operator shall not be subject to any occupancy, use, or similar fee, with respect to its use of such
423 rights-of-way, by the locality or the state [Transportation Board] except to the extent that such
424 cable operator is also a certificated provider of telecommunications services and subject to the
425 public rights-of-way use fee under [insert citation] of this Act. The state [Transportation Board]

426 may charge, on a nondiscriminatory basis, fees to recover the approximate actual cost incurred for
427 the issuance of a permit to perform work within the rights-of-way and for inspections to ensure
428 compliance with the conditions of the permit, as such fees shall be established by regulations
429 adopted under the state [Administrative Process Act]; however, such fees may not apply to
430 certificated providers of telecommunications services except to the extent permitted under [insert
431 citation].

432 (B) A locality may charge, on a nondiscriminatory basis, fees to recover the approximate
433 actual cost incurred for the issuance of a permit to perform work within the rights-of-way and for
434 inspections to ensure compliance with the conditions of the permit, as such fees existed on
435 [February 1, 1997], or as subsequently modified by ordinance; however, such fees may not apply
436 to certificated providers of telecommunications services except to the extent permitted under
437 [insert citation]. The limitation as to fees charged for the use of the public rights-of-way shall not
438 be applicable to pole attachments and conduit occupancy agreements between a franchised cable
439 operator and a locality or its authority or commission, which permits such operator to use the
440 public poles or conduits.

441 (C) Except as provided in [insert citation] and in any rules adopted by the
442 [Commonwealth Transportation Board] under [insert citation] cable franchise granted hereunder
443 supersedes and replaces any and all other requirements and fees in local laws and the laws of the
444 state relating to the use of the public rights-of-way by a cable system or other facilities for the
445 provision of cable service, whether such other authorizations are designated as franchises,
446 permits, consents, ordinances, or otherwise. No cable operator that is a certificated provider of
447 telecommunications services that has previous consent to use the public rights-of-way in a
448 locality through a franchise or a certificated provider of telecommunications services that lacked
449 prior consent to provide cable service in a locality but provided telecommunications service over
450 facilities leased from an entity having previous consent to use the public rights-of-way in such
451 locality through a franchise and granted a franchise and paying fees pursuant to this section shall
452 be required, in order to develop or operate a cable system or other facilities to provide video
453 services, to obtain consent in accordance with [insert citation], except for permits or other
454 permission to open streets and roads, or submit bids, bonds or applications in accordance with
455 [insert citation], except for reasonable performance bonds or letters of credit not in excess of
456 [\$50,000]. The restrictions in [insert citation], including but not limited to the advertisement and
457 receipt of bids for franchises, shall not apply to a cable system or other facilities used to provide
458 cable services by cable operator that is a certificated provider of telecommunications services
459 with previous consent to use the public rights-of-way in a locality through a franchise, including
460 the provision of telecommunications services over facilities leased from an entity with previous
461 consent to use the public rights-of-way in a locality through a franchise, but without previous
462 consent to provide cable service in that locality.

463
464 Section 7. [*Regulation of Facility Construction or Rights-of-Way Management*
465 *Requirements for Certain Cable Operators.*] A locality shall not impose through a franchise to
466 provide cable service, whether by negotiation or by ordinance, any facility construction or rights-
467 of-way management requirements on a cable operator that is a certificated provider of
468 telecommunications services that has a franchise to use the public rights-of-way in a locality or a
469 certificated provider of telecommunications services that lacked prior consent to provide cable
470 service in a locality but provided telecommunications services over facilities leased from an entity
471 having a franchise to use the public rights-of-way in such locality, except that a municipality must
472 meet the requirements of section 18 of this Act or otherwise be authorized to provide cable
473 service.

474

475 Section 8. [*Itemization.*] A cable operator providing cable service may identify as a
476 separate line item on each regular bill of each subscriber the amount of the total bill assessed as a
477 franchise fee, or any equivalent fee, and the locality to which such fee is paid; the amount of the
478 total bill assessed to satisfy any requirements imposed on the cable operator, including those to
479 support public, educational, or governmental access facilities, including institutional networks;
480 and the amount of any other fee, tax, assessment, or charge of any kind imposed by any
481 governmental entity on the transaction between the cable operator and the subscriber.
482

483 Section 9. [*Reciprocity.*] Upon the request by an existing cable operator in the locality, a
484 locality that has negotiated and granted a cable franchise to a new cable provider through
485 negotiation, whether before or after [July 1, 2006], shall make available to that existing cable
486 operator the applicable terms and conditions that such locality provides to a new cable operator,
487 by an amendment and restatement in lieu of its existing franchise document. In addition, upon the
488 request by an existing cable operator in the locality, a locality adopting an ordinance under this
489 Act shall make available to that existing cable operator the applicable terms and conditions from
490 any such ordinance by opting into an ordinance cable franchise. In either such event, the existing
491 cable operator may accept all applicable terms and conditions only in their entirety and in lieu of
492 its existing franchise document and without the ability to accept specific terms and conditions.
493 The locality and the existing cable operator shall amend the cable franchise of the existing cable
494 operator to substitute the new, applicable terms and conditions upon notice of acceptance from
495 the existing cable operator. An existing cable provider in a locality shall have an enforceable right
496 to require that its cable franchise be amended and restated within [90] days of its request to
497 substitute the new, applicable terms and conditions of the new negotiated franchise or new
498 ordinance cable franchise granted to a new cable franchisee. Notwithstanding any other provision
499 in this Act, no existing cable operator shall reduce the geographic area in which it actually
500 provides cable service as of [July 1, 2006], by the exercise of its rights under this Act, but its
501 service obligations within such service areas shall be subject to the service exclusions set forth in
502 section 5 of this Act and the provisions of this section shall not alter the time period remaining in
503 any unexpired, existing franchise.
504

505 Section 10. [*Modification.*] No locality, without the consent of the franchisee, shall
506 accelerate the term of, require the renegotiation of, or otherwise modify in any way, an agreement
507 with any entity or a franchise, ordinance, permit, consent, or other authorization for such entity to
508 use the public rights-of-way because such entity has been granted a cable franchise under this Act
509 to use the public rights-of-way for the development and operation of a cable system.
510

511 Section 11. [*Transfer.*] No transfer of any franchise granted under this Act shall occur
512 without the prior consent of the locality, provided that such locality shall not unreasonably
513 withhold, delay, or condition such consent. No transfer shall be made to a person, group of people
514 or affiliate that is not legally, technically, and financially qualified to operate the cable system and
515 satisfy the franchise obligations.
516

517 Section 12. [*Surrender.*] Notwithstanding the provisions of this Act, a new cable
518 franchisee that considers, within [three years] after the grant of a cable franchise under this Act,
519 that its provision of cable services within the locality is no longer economically feasible may
520 notify the locality and surrender its cable franchise for the entire locality without liability to such
521 locality. If a new cable franchisee surrenders its cable service franchise, it shall not be eligible to
522 obtain a new cable service franchise within such locality until after the normal expiration date of
523 the franchise that such franchisee surrendered. Such surrender of a cable franchise shall have no

524 impact on other franchises held by the new cable franchisee or noncable services offered by the
525 new cable franchisee.
526

527 Section 13. [*Renewal.*] A cable operator electing to renew its cable franchise shall do so
528 pursuant to the renewal procedures in 47 U.S.C. § 546 or by providing notice to the locality that it
529 will opt into an Ordinance Cable Franchise pursuant to this Act. A cable operator may file such
530 notification that its cable franchise will be renewed by an Ordinance Cable Franchise not more
531 than [one] year in advance of the expiration date of the existing franchise or by a renewal
532 certification filed within [90] days after the effective date of this Act in the case of a current cable
533 franchise whose original, renewal, or extension term has expired. Except as provided by federal
534 law, the restrictions in [insert citation], including, but not limited to, the advertisement and receipt
535 of bids for cable franchises, shall not apply to renewal certifications except where a renewal
536 would result in a city or town having granted a cable franchise and a renewal with combined
537 terms in excess of [40] years.
538

539 Section 14. [*Act Construed.*] The fact that any person obtains a negotiated franchise or
540 ordinance cable franchise to provide cable services shall not create any presumption that such
541 person is providing cable services, is controlling or responsible for the management and operation
542 of a cable system, or is a cable operator, for purposes of federal law.
543

544 Section 15. [*Provision of Telecommunications Services.*]

545 (A) Any locality that operates an electric distribution system may provide
546 telecommunications services, including local exchange telephone service as defined in [insert
547 citation], within or outside its boundaries if the locality obtains a certificate pursuant to section 16
548 of this Act. Such locality may provide telecommunications services within any locality in which it
549 has electric distribution system facilities as of [March 1, 2002]. Any locality providing
550 telecommunications services on [March 1, 2002], may provide such telecommunications, Internet
551 access, broadband, information, and data transmission services within any locality within [75]
552 miles of the geographic boundaries of its electric distribution system as such system existed on
553 [March 1, 2002].

554 (B) A locality that has obtained a certificate pursuant to section 16 of this Act shall:

555 (i) comply with all applicable laws and regulations for the provision of
556 telecommunications services;

557 (ii) make a reasonable estimate of the amount of all federal, state, and local taxes
558 (including income taxes and consumer utility taxes) that would be required to be paid or collected
559 for each fiscal year if the locality were a for-profit provider of telecommunications services,

560 (iii) prepare reasonable estimates of the amount of any franchise fees and other
561 state and local fees (including permit fees and pole rental fees), and right-of-way charges that
562 would be incurred in each fiscal year if the locality were a for-profit provider of
563 telecommunications services,

564 (iv) prepare and publish annually financial statements in accordance with
565 generally accepted accounting principles showing the results of operations of its provision of
566 telecommunications services, and

567 (v) maintain records demonstrating compliance with the provisions of this section
568 that shall be made available for inspection and copying pursuant to the state [Freedom of
569 Information Act].

570 (C) Each locality that has obtained a certificate pursuant to section 16 of this Act shall
571 provide nondiscriminatory access to for-profit providers of telecommunications services on a
572 first-come, first-served basis to rights-of-way, poles, conduits or other permanent distribution

573 facilities owned, leased or operated by the locality unless the facilities have insufficient capacity
574 for such access and additional capacity cannot reasonably be added to the facilities.

575 (D) The prices charged and the revenue received by a locality for providing
576 telecommunications services shall not be cross-subsidized by other revenues of the locality or
577 affiliated entities, except in areas where no offers exist from for-profit providers of such
578 telecommunications services, or as permitted by the provisions [insert citation]. The provisions of
579 this subsection shall not apply to Internet access, broadband, information, and data transmission
580 services provided by any locality providing telecommunications services on [March 1, 2002].

581 (E) No locality providing such services shall acquire by eminent domain the facilities or
582 other property of any telecommunications service provider to offer cable, telephone, data
583 transmission or other information or online programming services.

584 (F) Public records of a locality that has obtained a certificate pursuant to section 16 of this
585 Act, which records contain confidential proprietary information or trade secrets pertaining to the
586 provision of telecommunications service, shall be exempt from disclosure under the state
587 [Freedom of Information Act]. As used in this subsection, a public record contains confidential
588 proprietary information or trade secrets if its acquisition by a competing provider of
589 telecommunications services would provide the competing provider with a competitive benefit.
590

591 Section 16. [*Certificate to Operate as a Telephone Utility.*]

592 (A) The [Commission] may grant certificates to competing telephone companies, or any
593 county, city or town that operates an electric distribution system, for interexchange service where
594 it finds that such action is justified by public interest, and is in accordance with such terms,
595 conditions, limitations, and restrictions as may be prescribed by the [Commission] for
596 competitive telecommunications services. A certificate to provide interexchange services shall not
597 authorize the holder to provide local exchange services. The [Commission] may grant a certificate
598 to a carrier, or any county, city or town that operates an electric distribution system, to furnish
599 local exchange services as provided in subsection B.

600 (B) After notice to all local exchange carriers certificated in the state and other interested
601 parties and following an opportunity for hearing, the [Commission] may grant certificates to any
602 telephone company, or any county, city or town that operates an electric distribution system,
603 proposing to furnish local exchange telephone service in the state. In determining whether to
604 grant a certificate under this subsection, the state may require that the applicant show that it
605 possesses sufficient technical, financial, and managerial resources. Before granting any such
606 certificate, the [Commission] shall:

607 (i) consider whether such action reasonably protects the affordability of basic local
608 exchange telephone service, as such service is defined by the [Commission], and reasonably
609 assures the continuation of quality local exchange telephone service; and

610 (ii) find that such action will not unreasonably prejudice or disadvantage any class
611 of telephone company customers or telephone service providers, including the new entrant and
612 any incumbent local exchange telephone company, and is in the public interest. Except as
613 provided in subsection A of section 15 of this Act, all local exchange certificates granted by the
614 [Commission] after [July 1, 2002], shall be to provide service in any territory in the state unless
615 the applicant specifically requests a different certificated service territory. The [Commission]
616 shall amend the certificated service territory of each local exchange carrier that was previously
617 certificated to provide service in only part of the state to permit such carrier's provision of local
618 exchange service throughout this state beginning on [September 1, 2002], unless that local
619 exchange carrier notifies the [Commission] prior to [September 1, 2002], that it elects to retain its
620 existing certificated service territory. A local exchange carrier shall only be considered an
621 incumbent in any certificated service territory in which it was considered an incumbent prior to
622 [July 1, 2002].

623 (C) A [Commission] order, including appropriate findings of fact and conclusions of law,
624 denying or approving, with or without modification, an application for certification of a new
625 entrant shall be entered no more than [180] days from the filing of the application, except that the
626 [Commission], upon notice to all parties in interest, may extend that period in additional [30-day]
627 increments not to exceed an additional [90] days in all.

628 (D) The [Commission] shall:

629 (i) promote and seek to assure the provision of competitive services to all classes
630 of customers throughout all geographic areas of the state by a variety of service providers;

631 (ii) require equity in the treatment of the certificated local exchange telephone
632 companies so as to encourage competition based on service, quality, and price differences
633 between alternative providers;

634 (iii) consider the impact on competition of any government-imposed restrictions
635 limiting the markets to be served or the services offered by any provider;

636 (iv) determine the form of rate regulation, if any, for the local exchange services to
637 be provided by the applicant and, upon application, the form of rate regulation for the comparable
638 services of the incumbent local exchange telephone company provided in the geographical area to
639 be served by the applicant; and

640 (v) promulgate standards to assure that there is no cross-subsidization of the
641 applicant's competitive local exchange telephone services by any other of its services over which
642 it has a monopoly, whether or not those services are telephone services. The [Commission] shall
643 also adopt safeguards to ensure that the prices charged and the revenue received by a county, city
644 or town for providing telecommunications services shall not be cross-subsidized from other
645 revenues of the county, city or town or affiliated entities, except in areas where no offers exist
646 from for-profit providers of such telecommunications services, or as authorized pursuant to
647 subdivision 5 of this subsection.

648 (E) The [Commission] shall discharge the responsibilities of state commissions as set
649 forth in the Federal Telecommunications Act of 1996 (P.L. 104-104), this Act, and applicable law
650 and regulations, including, but not limited to, the arbitration of interconnection agreements
651 between local exchange carriers; however, the [Commission] may exercise its discretion to defer
652 selected issues under the Act. If the [Commission] incurs additional costs in arbitrating such
653 agreements or resolving related legal actions or disputes that cannot be recovered through the
654 maximum levy authorized pursuant to [insert citation], that levy shall be increased above the levy
655 authorized by that section to the extent necessary to recover such additional costs.

656 (F) Upon the [Commission's] granting of a certificate to a county, city or town under this
657 section, such county, city, or town:

658 (i) shall be subject to regulation by the [Commission for Intrastate
659 Telecommunications Services],

660 (ii) shall have the same duties and obligations as other certificated providers of
661 telecommunications services,

662 (iii) shall separately account for the revenues, expenses, property, and source of
663 investment dollars associated with the provision of such services, and

664 (iv) to ensure that there is no unreasonable advantage gained from a government
665 agency's taxing authority and control of government-owned land, shall charge an amount for such
666 services that

667 (a) does not include any subsidies, unless approved by the [Commission],

668 and

669 (b) takes into account, by imputation or allocation, equivalent charges for
670 all taxes, pole rentals, rights of way, licenses, and similar costs incurred by for-profit providers.
671 Each certificated county, city, or town that provides telecommunications services regulated by the
672 [Commission] shall file an annual report with the [Commission] demonstrating that the

673 requirements of clauses (iii) and (iv) of this subdivision have been met. The [Commission] may
674 approve a subsidy under this section if deemed to be in the public interest and provided that such
675 subsidy does not result in a price for the service lower than the price for the same service charged
676 by the incumbent provider in the area.

677 (G) A locality that has obtained a certificate pursuant to this section shall:

678 (i) comply with all applicable laws and regulations for the provision of
679 telecommunications services;

680 (ii) make a reasonable estimate of the amount of all federal, state, and local taxes
681 (including income taxes and consumer utility taxes) that would be required to be paid or collected
682 for each fiscal year if the locality were a for-profit provider of telecommunications services,

683 (iii) prepare reasonable estimates of the amount of any franchise fees and other
684 state and local fees (including permit fees and pole rental fees), and right-of-way charges that
685 would be incurred in each fiscal year if the locality were a for-profit provider of
686 telecommunications services,

687 (iv) prepare and publish annually financial statements in accordance with generally
688 accepted accounting principles showing the results of operations of its provision of
689 telecommunications services, and

690 (v) maintain records demonstrating compliance with the provisions of this section
691 that shall be made available for inspection and copying pursuant to the state [Freedom of
692 Information Act (insert citation)].

693 (vi) Each locality that has obtained a certificate pursuant to this section shall
694 provide nondiscriminatory access to for-profit providers of telecommunications services on a
695 first-come, first-served basis to rights-of-way, poles, conduits or other permanent distribution
696 facilities owned, leased or operated by the locality unless the facilities have insufficient capacity
697 for such access and additional capacity cannot reasonably be added to the facilities.

698 (vii) The prices charged and the revenue received by a locality for providing
699 telecommunications services shall not be cross-subsidized by other revenues of the locality or
700 affiliated entities, except in areas where no offers exist from for-profit providers of such
701 telecommunications services, or as permitted by the provisions of subdivision B 5. The provisions
702 of this subdivision shall not apply to Internet access, broadband, information, and data
703 transmission services provided by any locality providing telecommunications services on [March
704 1, 2002].

705 (viii) The [Commission] shall promulgate rules necessary to implement this
706 section. In no event, however, shall the rules necessary to implement [subdivisions B 5 iii and iv,
707 B 6 ii through v, and B 8] impose any obligations on a locality that has obtained a certificate
708 pursuant to this section, but is not yet providing telecommunications services regulated by the
709 [Commission].

710 (ix) Public records of a locality that has obtained a certificate pursuant to this
711 section, which records contain confidential proprietary information or trade secrets pertaining to
712 the provision of telecommunications service, shall be exempt from disclosure under the state
713 [Freedom of Information Act (insert citation)]. As used in this subdivision, a public record
714 contains confidential proprietary information or trade secrets if its acquisition by a competing
715 provider of telecommunications services would provide the competing provider with a
716 competitive benefit.

717 (H) [Insert citation] shall not apply to a county, city or town that has obtained a certificate
718 pursuant to this section.

719 (I) Any county, city, or town that has obtained a certificate pursuant to this section may
720 construct, own, maintain, and operate a fiber optic or communications infrastructure to provide
721 consumers with Internet services, data transmission services, and any other communications
722 service that its infrastructure is capable of delivering; provided, however, nothing in this

723 subsection shall authorize the provision of cable television services or other multi-channel video
724 programming service. Furthermore, nothing in this subsection shall alter the authority of the
725 [Commission].

726 (J) Any county, city, or town that has obtained a certificate pursuant to this section and
727 that had installed a cable television headend prior to [December 31, 2002], is authorized to own
728 and operate a cable television system or other multi-channel video programming service and shall
729 be exempt from the provisions of [insert citation]. Nothing in this subsection shall authorize the
730 [Commission] to regulate cable television service.

731

732 Section 17. [*Pole Attachments; Cable Television Systems and Telecommunications*
733 *Service Providers.*]

734 (A) As used in this section:

735 “Cable television system” means any system licensed, franchised or certificated
736 pursuant to section 2 of this Act that transmits television signals, for distribution to subscribers of
737 its services for a fee, by means of wires or cables connecting its distribution facilities with its
738 subscriber's television receiver or other equipment connecting to the subscriber's television
739 receiver, and not by transmission of television signals through the air.

740 “Pole attachment” means any attachment by a cable television system or provider
741 of telecommunications service to a pole, duct, conduit, right-of-way or similar facility owned or
742 controlled by a public utility.

743 “Public utility” has the same meaning ascribed thereto in [insert citation].

744 “Rearrangement” means work performed at the request of a telecommunications
745 service provider or cable television system to, on or in an existing pole, duct, conduit, right-of-
746 way or similar facility owned or controlled by a public utility that is necessary to make such pole,
747 duct, conduit, right-of-way, or similar facility usable for a pole attachment. “Rearrangement”
748 shall include replacement, at the request of a telecommunications service provider or cable
749 television system, of the existing pole, duct, conduit, right-of-way, or similar facility if the
750 existing pole, duct, conduit, right-of-way, or similar facility does not contain adequate surplus
751 space or excess capacity and cannot be rearranged so as to create the adequate surplus space or
752 excess capacity required for a pole attachment.

753 “Telecommunications service provider” means any public service corporation or
754 public service company that holds a certificate of public convenience and necessity to furnish
755 local exchange telephone service or interexchange telephone service.

756 (B) Upon request by a telecommunications service provider or cable television system to a
757 public utility, both the public utility and the telecommunications service provider or cable
758 television system shall negotiate in good faith to arrive at a mutually agreeable contract for
759 attachments to the public utility's poles by the telecommunications service provider or cable
760 television system.

761 (C) After entering into a contract for attachments to its poles by any telecommunications
762 service provider or cable television system, a public utility shall permit, upon reasonable terms
763 and conditions and the payment of reasonable annual charges and the cost of any required
764 rearrangement, the attachment of any wire, cable, facility or apparatus to its poles or pedestals, or
765 the placement of any wire, cable, facility or apparatus in conduit or duct space owned or
766 controlled by it, by such telecommunications service provider or cable television system that is
767 authorized by law, to construct and maintain the attachment, provided that the attachment does
768 not interfere, obstruct or delay the service and operation of the public utility or create a safety
769 hazard.

770 (D) Notwithstanding the provisions of subsection C, a public utility providing electric
771 utility service may deny access by a telecommunications service provider or cable television
772 system to any pole, duct, conduit, right-of-way, or similar facility owned or controlled, in whole

773 or in part, by such public utility, provided such denial is made on a nondiscriminatory basis on
774 grounds of insufficient capacity or reasons of safety, reliability, or generally applicable
775 engineering principles.

776 (E) This section shall not apply to any pole attachments regulated pursuant to 47 U.S.C. §
777 224.

778
779 Section 18. [*Regulation by State Corporation Commission.*]

780 (A) Every cooperative organized under this Act shall be subject to the jurisdiction of the
781 [State Corporation Commission] with respect to telephone services and facilities in the same
782 manner and to the same extent as are other similar utilities under the laws of this state, except
783 that:

784 (i) the [Commission] shall have no jurisdiction over the rates, service quality and
785 types of service offerings of the cooperative to its members;

786 (ii) a cooperative shall not be required to file a local service tariff with the
787 [Commission]; and

788 (iii) where a cooperative establishes a cable television system, it shall be subject to
789 this Act.

790 (B) That in any locality in which the governing body of the locality has granted one or
791 more new cable franchises during the [12-month period prior to July 1, 2006], that include an
792 overlapping geographic service area with another cable franchise within that locality, all
793 franchises within that locality shall remain in full force and effect until the earliest expiration date
794 of the overlapping franchises or until one is terminated pursuant to the terms of the franchise and
795 shall not be subject to the provisions of this Act, except as set forth in this clause. A locality that
796 has granted one or more new, overlapping franchises within the [12-month period prior to July 1,
797 2006], shall have the option not to offer, accept, or implement the ordinance cable franchise
798 process described in section 5 of this Act until the earliest expiration date of the overlapping
799 franchises, but may determine only to grant new cable franchises during such period through the
800 Negotiated Cable Franchise process. Any such locality, when granting any additional cable
801 franchises after July 1, 2006, and until the existing cable franchises expire or are terminated
802 pursuant to their terms, shall make the terms of any such newly granted franchise available,
803 pursuant to section 9 of this Act, to all cable operators with existing franchises. Any locality in
804 which the governing body of the locality has granted one or more new cable franchises during the
805 [12-month period prior to July 1, 2006], that include an overlapping geographic service area with
806 another cable franchise within that locality, shall make the terms of any such newly granted
807 franchise available, in the manner described in section 5 of this Act, to all cable operators with
808 existing franchises on the date the subsequent overlapping franchise was awarded. Upon the
809 expiration of a current cable franchise that is subject to this clause, this clause shall no longer be
810 applicable to any cable franchise in such locality and the locality shall thereafter be subject to all
811 provisions of this Act.

812
813 Section 19. [*Severability.*] [Insert severability clause.]

814
815 Section 20. [*Repealer.*] [Insert repealer clause.]

816
817 Section 21. [*Effective Date.*] [Insert effective date.]