
SENATE BILL 6003

State of Washington 60th Legislature 2007 Regular Session

By Senators Poulsen, Rockefeller, Honeyford, Pridemore, Holmquist, Kilmer, Morton and Kohl-Welles

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1 AN ACT Relating to statewide authorization for the provision of
2 cable service or video service by competitive cable service providers
3 and competitive video service providers in competition with incumbent
4 cable operators; and adding a new chapter to Title 80 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** It is the intent of the legislature to
7 establish a goal of promoting competition and consumer choice for cable
8 television service.

9 NEW SECTION. **Sec. 2.** The definitions in this section apply
10 throughout this chapter unless the context clearly requires otherwise.

11 (1) "Cable service" is defined as set forth in 47 U.S.C. Sec.
12 522(6).

13 (2) "Cable operator" is defined as set forth in 47 U.S.C. Sec.
14 522(5).

15 (3) "Cable system" is defined as set forth in 47 U.S.C. Sec.
16 522(7).

17 (4) "Commission" means the Washington utilities and transportation
18 commission.

1 (5) "Competitive cable service provider" means an entity authorized
2 by this chapter to provide cable service over a cable system other than
3 the incumbent cable operator providing service in the area to be served
4 by the competitive cable service provider.

5 (6) "Competitive video service provider" means an entity authorized
6 by this chapter to provide video service. This term does not include
7 a cable operator, and a competitive video service provider may not be
8 considered a cable operator and the facilities of a competitive video
9 service provider may not be considered a cable system.

10 (7) "Competitive cable service provider fee" means the amount paid
11 by a competitive cable service provider under section 4 of this act.

12 (8) "Competitive video service provider fee" means the amount paid
13 by a competitive video service provider under section 4 of this act.

14 (9) "Franchise" means an initial authorization, or renewal of an
15 authorization, regardless of whether the authorization is designated as
16 a franchise, permit, license, resolution, contract, certificate,
17 agreement, or otherwise, that authorizes the construction and operation
18 of a cable system or video service provider's network in the public
19 rights-of-way.

20 (10) "Incumbent cable operator" means the provider serving the
21 largest number of cable television service subscribers in a particular
22 local franchise service area on July 1, 2007.

23 (11) "Local government" means any city, town, and county or other
24 municipality of this state.

25 (12) "Public rights-of-way" means the area on, below, or above a
26 public roadway, highway, street, public sidewalk, alley, waterway, or
27 utility easements dedicated for compatible uses.

28 (13) "Video programming" means programming provided by, or
29 generally considered comparable to programming provided by, a
30 television broadcast station, as set forth in 47 U.S.C. Sec. 522(20).

31 (14) "Video service" means video programming services provided
32 through wireline facilities located at least in part in the public
33 rights-of-way without regard to delivery technology, including internet
34 protocol technology. This definition does not include any video
35 programming provided by a commercial mobile service provider defined in
36 47 U.S.C. Sec. 332(d) or cable service provided by a competitive cable
37 service provider.

1 NEW SECTION. **Sec. 3.** (1) A competitive cable service provider or
2 competitive video service provider seeking to provide cable service or
3 video service in the state of Washington after the effective date of
4 this section shall file an application for authorization with the
5 commission as required by this section.

6 (2) The commission shall issue an authorization permitting a
7 competitive cable service provider or a competitive video service
8 provider to provide cable service or video service in the state of
9 Washington within thirty calendar days after receipt of a completed
10 affidavit submitted by the competitive cable service provider or
11 competitive video service provider and signed by an officer or general
12 partner of the applicant affirming the following:

13 (a) That the applicant agrees to comply with all applicable federal
14 and state laws and regulations;

15 (b) A written description of the city, town, county, or other
16 municipality of this state to be served, in whole or in part, by the
17 applicant, which written description must be amended by the applicant
18 before the provision of cable service within an area not described in
19 a previous application or amendment filed by the applicant. For
20 purposes of this subsection (2)(b), a map or other graphic
21 representation may supplement, but not substitute for, the written
22 description; and

23 (c) The location of the principal place of business and the names
24 of the principal executive officers of the applicant.

25 (3) A holder of a state authorization to provide cable service or
26 video service who seeks to amend the authorization to include
27 additional areas to be served must file an amended application with the
28 commission that reflects the new areas to be served.

29 (4) The authorization issued by the commission is fully
30 transferable to any successor in interest to the applicant to which it
31 is initially granted. A notice of transfer must be filed with the
32 commission within thirty days after the completion of such a transfer.

33 (5) The authorization issued by the commission may be terminated by
34 the competitive cable service provider or competitive video service
35 provider by submitting notice to the commission.

36 (6) To the extent required by applicable law, any cable or video
37 service authorization granted by this chapter by the commission
38 constitutes a "franchise" for purposes of 47 U.S.C. Sec. 541(b)(1). To

1 the extent required for purposes of 47 U.S.C. Secs. 521 through 561,
2 only the state of Washington shall constitute the exclusive
3 "franchising authority" for competitive cable service providers and
4 competitive video service providers in the state of Washington.

5 (7) Neither the commission, nor any other state agency, nor any
6 local government, nor any other political entity of the state of
7 Washington may:

8 (a) Require a competitive cable service provider or competitive
9 video service provider to obtain a separate franchise; or

10 (b) Otherwise impose any fee or franchise requirement on any
11 competitive cable service provider or competitive video service
12 provider except as provided in this chapter. For purposes of this
13 subsection (7)(b), a franchise requirement includes, without
14 limitation, any provision that:

15 (i) Regulates the rates charged by competitive cable service
16 providers or competitive video service providers;

17 (ii) Requires competitive cable service providers or competitive
18 video service providers to satisfy any build-out requirements or deploy
19 any facilities or equipment; and

20 (iii) Requires a franchise to be approved by a vote of the people.

21 (8) Not later than one hundred eighty days after a request by a
22 local government in which the competitive cable service provider or the
23 competitive video service provider is providing cable service or video
24 service, the holder of a state authorization to provide cable service
25 or video service shall designate a sufficient amount of capacity on its
26 communications network to allow the provision of a comparable number of
27 channels or capacity of public, educational, and governmental
28 noncommercial programming provided by the incumbent cable operator.

29 (9) The content to be provided over this public, educational, and
30 governmental access under this section is the responsibility of the
31 local government receiving the benefit of the capacity and the holder
32 of a state authorization to provide cable service or video service
33 bears only the responsibility for the transmission of the content,
34 subject to technological restraints.

35 (10) The local government must ensure that all transmissions,
36 content, or programming to be transmitted by a holder of a state
37 authorization to provide cable service or video service are provided or
38 submitted to the competitive cable service provider or competitive

1 video service provider in a manner or form that is capable of being
2 accepted and transmitted by a provider, without requirement for
3 additional alteration or change in the content by the provider, over
4 the particular network of the competitive cable service provider or
5 competitive video service provider, which is compatible with the
6 technology or protocol utilized by the competitive cable service
7 provider or competitive video service provider to deliver services.

8 (11) Where technically feasible, the holder of a state
9 authorization to provide cable service or video service and an
10 incumbent cable operator must use reasonable efforts to interconnect
11 their cable or video systems for the purpose of providing public,
12 educational, and governmental programming. Interconnection may be
13 accomplished by direct cable, microwave link, satellite, or other
14 reasonable method of connection. Holders of a state authorization to
15 provide cable service or video service and incumbent cable operators
16 must negotiate in good faith and incumbent cable operators may not
17 withhold interconnection of public, educational, and governmental
18 channels.

19 (12) If an incumbent cable operator pays any fee to a local
20 government for public, educational, and governmental channels, any
21 subsequent holder of a state authorization to provide cable service or
22 video service that includes the local government must pay this fee at
23 the same rate. All fees collected under this subsection (12) must be
24 used only for the support of the public, educational, and governmental
25 channels.

26 (13) A court of competent jurisdiction has exclusive jurisdiction
27 to enforce any requirement under this section.

28 (14) Except as provided in subsections (1) through (12) of this
29 section, competitive cable service providers and competitive video
30 service providers enjoy the same rights under the law of the state of
31 Washington as incumbent cable operators and other providers of video
32 programming.

33 (15) The commission is solely responsible for enforcing the
34 provisions of this chapter by filing a complaint in a court of
35 competent jurisdiction.

36 (16) Nothing in this chapter is intended to abrogate, nullify, or
37 adversely affect any franchise or other contractual rights, duties, or
38 obligations existing and incurred by a cable operator as of the

1 effective date of this section. A cable operator with an existing
2 franchise with a local government to provide cable service in the state
3 as of the effective date of this section is not eligible to obtain a
4 state authorization to provide cable service or video service for any
5 area for which the cable operator has an existing franchise agreement
6 with the local government, or any portion thereof, until the expiration
7 date of the existing franchise agreement.

8 NEW SECTION. **Sec. 4.** (1) A competitive cable service provider or
9 competitive video service provider will provide notice to each local
10 government with jurisdiction in which a competitive cable service
11 provider or competitive video service provider begins to offer cable
12 service or video service.

13 (2) In any locality in which a competitive cable service provider
14 offers cable service or a competitive video service provider offers
15 video service, the competitive cable service provider or competitive
16 video service provider must calculate and pay the competitive cable
17 service provider or competitive video service provider fee to the local
18 government with jurisdiction upon the local government's written
19 request. If the local government makes such a request, the competitive
20 cable service provider or competitive video service provider fee is due
21 on a quarterly basis, forty-five days after the close of the quarter,
22 and must be calculated as a percentage of gross revenues, as defined in
23 this section. The local government may not demand any additional fees
24 or charges from the competitive cable service provider or competitive
25 video service provider except as provided by this chapter, and may not
26 demand the use of any other calculation method.

27 (3) The percentage to be applied against gross revenues under
28 subsection (1) of this section must be set by the local government and
29 identified in its written request equal to the percentage paid by the
30 incumbent cable operator or five percent, whichever is less.

31 (4) For purposes of this section, "gross revenues" means all
32 consideration of any kind or nature, including, without limitation,
33 cash, credits, property, and in-kind contributions (services or goods)
34 received by the provider from subscribers for the provision of cable
35 service over a cable system by a competitive cable provider or video
36 service by a competitive video service provider within the local
37 government's jurisdiction. Competitive cable service providers and

1 competitive video service providers are subject to and are only
2 required to pay either the competitive cable service provider fee or
3 the competitive video service provider fee but in no event may a
4 provider be subject to both the competitive cable service provider and
5 competitive video service provider fees.

6 (5) For purposes of this section, "gross revenues" does not
7 include:

8 (a) Revenues not actually received, even if billed, such as bad
9 debt;

10 (b) Revenues received by any affiliate or any other person in
11 exchange for supplying goods or services used by the provider to
12 provide cable service or video service;

13 (c) Refunds, rebates, or discounts made to subscribers, leased
14 access providers, advertisers, or any local government;

15 (d) Any revenues from services not classified as cable service or
16 video service, including, without limitation, revenue received from
17 telecommunications services, revenue received from information
18 services, revenue received in connection with advertising, revenue
19 received in connection with home shopping services, or any other
20 revenues attributed by the competitive cable service provider or
21 competitive video service provider to noncable service or nonvideo
22 service in accordance with any applicable laws, rules, regulations,
23 standards, or orders;

24 (e) Any revenue paid by subscribers to home shopping programmers
25 directly from the sale of merchandise through any home shopping channel
26 offered as part of the cable services or video services;

27 (f) The sale of cable services or video services for resale in
28 which the purchaser is required to collect the five-percent fee from
29 the purchaser's customer;

30 (g) Any tax of general applicability imposed upon the competitive
31 cable service provider or competitive video service provider or upon
32 subscribers by a city, state, federal, or any other governmental entity
33 and required to be collected by the competitive cable service provider
34 or competitive video service provider and remitted to the taxing entity
35 including, but not limited to, sales or use tax, gross receipts tax,
36 excise tax, utility users tax, public service tax, and communication
37 taxes, and including the five-percent fee specified in this subsection;

1 (h) The provision of cable services or video services to public
2 institutions, public schools, or governmental entities at no charge;

3 (i) Any foregone revenue from the competitive cable service
4 provider's or competitive video service provider's provision of free or
5 reduced-cost video service to any person, including, without
6 limitation, any municipality and other public institutions or other
7 institutions;

8 (j) Sales of capital assets or sales of surplus equipment;

9 (k) Reimbursement by programmers of marketing costs incurred by the
10 competitive cable service provider or competitive video service
11 provider for the introduction or promotion of new programming;

12 (l) Directory or internet advertising revenue including, but not
13 limited to, yellow page, white page, banner advertisement, and
14 electronic publishing; and

15 (m) Copyright fees paid to the United States copyright office.

16 (6) At the request of a local government, but no more than once per
17 year, the commission may retain an independent auditor to perform
18 reasonable audits of the competitive cable service provider's or
19 competitive video service provider's calculation of the competitive
20 cable service provider or competitive video service provider fee. The
21 requesting local government and the competitive cable service provider
22 or competitive video service provider shall each bear their own costs
23 associated with such an audit. The requesting local government shall
24 also bear the commission's costs, including but not limited to, the
25 commission's cost to retain an independent auditor to perform an audit.

26 (7) Any competitive cable service provider or competitive video
27 service provider may identify and collect the amount of the competitive
28 cable service provider or competitive video service provider fee as a
29 separate line item on the regular bill of each subscriber.

30 NEW SECTION. **Sec. 5.** (1) A local government may grant a use
31 permit under chapter 35.99 RCW to the holder of a state authorization
32 to provide cable service or video service to install, maintain, repair,
33 or remove a communications network within public rights-of-way and must
34 provide the holder of a state authorization to provide cable service or
35 video service with open, comparable, nondiscriminatory, and
36 competitively neutral access to the public rights-of-way. Consistent
37 with chapter 35.99 RCW, requirements otherwise applicable to holders of

1 master permits are deemed satisfied by a holder of a statewide
2 authorization to provide cable service or video service in good
3 standing.

4 (2) A local government may not discriminate against the holder of
5 a state authorization to provide cable service or video service
6 regarding, without limitation:

7 (a) The authorization or placement of a communications network in
8 public rights-of-way;

9 (b) Access to a building; or

10 (c) A municipal utility pole attachment term.

11 (3) A local government may impose on a competitive cable service
12 provider or competitive video service provider a permit fee only to the
13 extent it imposes such a fee on incumbent cable operators, and any fee
14 may not exceed the actual, direct costs incurred by the local
15 government for issuing the relevant permit. In no event may a fee
16 under this subsection be levied:

17 (a) If the competitive cable service provider or competitive video
18 service provider already has paid a permit fee of any kind in
19 connection with the same activity that would otherwise be covered by
20 the permit fee under this subsection or is otherwise authorized by law
21 or contract to place the facilities used by the competitive cable
22 service provider or competitive video service provider in the public
23 rights-of-way; or

24 (b) For general revenue purposes.

25 NEW SECTION. **Sec. 6.** A competitive cable service provider or
26 competitive video service provider that has been granted a state
27 authorization to provide cable service or video service may not deny
28 access to service to any group of potential residential subscribers
29 because of the income, race, or national origin of the residents in the
30 local area in which such a group resides.

31 NEW SECTION. **Sec. 7.** (1) The provisions of this chapter are
32 intended to be consistent with the federal cable act, (47 U.S.C. Sec.
33 521 et. seq.).

34 (2) Except as otherwise stated in this chapter, nothing in this
35 chapter may be interpreted to prevent a competitive cable service
36 provider, competitive video service provider, a cable operator or a

1 local government from seeking clarification of its rights and
2 obligations under federal law or to exercise any right or authority
3 under federal or state law.

4 NEW SECTION. **Sec. 8.** If any provision of this act or its
5 application to any person or circumstance is held invalid, the
6 remainder of the act or the application of the provision to other
7 persons or circumstances is not affected.

8 NEW SECTION. **Sec. 9.** Sections 1 through 8 of this act constitute
9 a new chapter in Title 80 RCW.

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