

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 520

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO THE IDAHO VIDEO SERVICE ACT; AMENDING TITLE 50, IDAHO CODE, BY
2 THE ADDITION OF A NEW CHAPTER 30, TITLE 50, IDAHO CODE, TO PROVIDE A
3 SHORT TITLE, TO DEFINE TERMS, TO PROVIDE FOR FRANCHISING AUTHORITY,
4 USE OF PUBLIC RIGHTS-OF-WAY AND MODIFICATIONS OF EXISTING FRANCHISE
5 AGREEMENTS, TO PROVIDE FOR FEES, TO REQUIRE THE HOLDER OF A CERTIFICATE
6 TO PROVIDE SERVICE WITHIN A CERTAIN PERIOD AND TO PROVIDE FOR REVOCATION
7 OF CERTIFICATE FOR NONCOMPLIANCE, TO PROVIDE CUSTOMER ACCESS TO
8 COMMUNITY PROGRAMMING, TO PROVIDE A VIDEO SERVICE PROVIDER FEE WITH
9 DEFINITIONS, TO PROVIDE FOR NONDISCRIMINATION BY GOVERNMENTAL ENTITIES
10 RELATING TO USE OF PUBLIC RIGHTS-OF-WAY, TO PROHIBIT DISCRIMINATION
11 AMONG POTENTIAL RESIDENTIAL SUBSCRIBERS, TO PROVIDE FOR CUSTOMER
12 SERVICE STANDARDS, TO PROVIDE FOR APPLICABILITY OF OTHER LAW; AND TO
13 PROVIDE SEVERABILITY.
14

15 Be It Enacted by the Legislature of the State of Idaho:

16 SECTION 1. That Title 50, Idaho Code, be, and the same is hereby amended
17 by the addition thereto of a NEW CHAPTER, to be known and designated as
18 Chapter 30, Title 50, Idaho Code, and to read as follows:

19 CHAPTER 30
20 IDAHO VIDEO SERVICE ACT

21 50-3001. SHORT TITLE. This chapter shall be known and may be cited as
22 the "Idaho Video Service Act."

23 50-3002. DEFINITIONS. As used in this chapter:

24 (1) "Access to video service" means the capability of a video service
25 provider to provide video service at a household address irrespective of
26 whether a subscriber has ordered the service or whether the service is
27 actually provided at that address.

28 (2) "Actual competition" means the physical installation and
29 activation of a network to provide video service by a nonincumbent video
30 service provider anywhere within a political subdivision.

31 (3) "Cable service" has the meaning ascribed to it in 47 U.S.C. section
32 522, as that section existed on January 1, 2010.

33 (4) "Cable system" has the meaning ascribed to it in 47 U.S.C. section
34 522, as that section existed on January 1, 2010.

35 (5) "Certificate of franchise authority" means a certificate issued
36 by the Idaho secretary of state to a video service provider pursuant to the
37 provisions of this chapter.

38 (6) "Franchise" has the meaning ascribed to it in 47 U.S.C. section
39 522, as that section existed on January 1, 2010. However, a certificate of

1 franchise authority issued pursuant to section 50-3003, Idaho Code, shall
2 constitute a franchise for the purposes of 47 U.S.C. section 522.

3 (7) "Franchising entity" means the city, county or state authorized by
4 state or federal law to grant a franchise.

5 (8) "Incumbent cable service provider" means a person who provides
6 cable service and holds a franchise issued by a franchising entity prior to
7 July 1, 2010.

8 (9) "Local unit of government" means a city, county or other
9 governmental entity of the state of Idaho having maintenance and operation
10 responsibility over the public rights-of-way within an area for which
11 a franchise or certificate of franchise authority has been issued by a
12 franchising entity.

13 (10) "Nonincumbent video service provider" means:

14 (a) A person authorized under the provisions of this chapter to provide
15 video service in an area in which cable service is being provided by an
16 incumbent cable service provider; or

17 (b) A person authorized under the provisions of this chapter to provide
18 video service in an area in which, on the effective date of this chapter,
19 there was no incumbent cable service provider providing cable service.

20 (11) "Political subdivision" means a city or county of the state of
21 Idaho.

22 (12) "Public rights-of-way" means the area on, below or above a public
23 roadway, highway, street, public sidewalk, alley, waterway or utility
24 easement dedicated for compatible uses.

25 (13) "System operator" means any person or group of persons who provide
26 video service and directly, or through one (1) or more affiliates, own a
27 significant interest in the system or facilities through which the video
28 service is provided and which person has been issued a certificate of
29 franchise authority pursuant to the provisions of this chapter.

30 (14) "Video service" means video programming service provided
31 primarily through equipment or facilities located in part within the public
32 rights-of-way without regard to the delivery technology. The term includes
33 cable service, but excludes any video programming provided to persons in
34 their capacity as subscribers to commercial mobile service as defined in 47
35 U.S.C. section 332(d), or video programming provided as a part of and via a
36 service that enables end users to access content, information, electronic
37 mail or other services offered over the public internet.

38 (15) "Video service provider" means a provider of video service, and
39 includes an incumbent cable or multichannel video service provider, a
40 nonincumbent video service provider or a system operator, unless the context
41 in which the term is used indicates otherwise.

42 (16) "Video service provider fee" means the amount paid by a system
43 operator pursuant to section 50-3007, Idaho Code.

44 50-3003. FRANCHISING AUTHORITY -- USE OF PUBLIC RIGHTS-OF-WAY --
45 MODIFICATIONS OF EXISTING FRANCHISE AGREEMENTS. (1) On and after July 1,
46 2010, no person shall offer video service within the state of Idaho unless
47 such person:

48 (a) Is an incumbent cable service provider providing cable service
49 within an existing franchise area by permission of, or pursuant to, a

1 franchise from a political subdivision in effect on the effective date
2 of this chapter or a subsequent renewal thereof; or

3 (b) Has been granted a certificate of franchise authority to do
4 business in the state of Idaho as a system operator by the Idaho
5 secretary of state as required in this chapter.

6 (2) Any person that meets the requirements of subsection (13) of
7 this section seeking a certificate of franchise authority to provide
8 video service shall submit an application that sets forth the following
9 information:

10 (a) The name of the applicant and the address of its principal place
11 of business within the state of Idaho and the names of the applicant's
12 principal executive officers and its primary Idaho representative;

13 (b) A specific identification of the political subdivision(s), or
14 portion thereof, wherein the applicant intends to provide video
15 service;

16 (c) The date on which the applicant intends to begin providing video
17 service in each political subdivision or portion thereof;

18 (d) Verification signed by an officer or general partner of the
19 applicant that:

20 (i) The applicant has filed with the federal communications
21 commission all forms required by that agency in advance of
22 offering video service in this state; and

23 (ii) That the applicant is legally, financially and technically
24 qualified to provide video service; provided however, that a
25 cable operator that was providing service in Idaho pursuant to a
26 franchise in effect on the day before the effective date of this
27 section shall be deemed to be legally, financially and technically
28 qualified to provide service;

29 (e) Verification that the applicant has procured and will maintain
30 comprehensive general liability insurance coverage and automobile
31 liability insurance coverage underwritten by one (1) or more companies
32 licensed to do business in the state of Idaho in an amount not less than
33 the minimum insurance requirement amount for governmental entities as
34 established in section 6-924, Idaho Code.

35 (3) The application shall be accompanied by a filing fee as established
36 in section 50-3004, Idaho Code. Within thirty (30) days after its filing
37 or within thirty (30) days after the filing of supplemental information
38 necessary to make it complete, the secretary of state shall determine
39 the completeness of an application or, if applicable, shall notify the
40 applicant of an incompleteness of determination, state the basis for
41 that determination, and inform the applicant that it may resubmit a
42 correct application. The secretary of state shall issue a certificate of
43 franchise authority within fifteen (15) days after the secretary of state's
44 determination that the filed application is complete and in compliance.
45 Promptly, upon issuance of a certificate of franchise authority, the
46 secretary of state shall provide written notice of such issuance to the
47 clerk(s) of the political subdivision(s) wherein video service is to be
48 provided.

49 (4) Persons that have received a certificate of franchise authority as
50 set forth in this section may use the public rights-of-way of the state and

1 any political subdivision, subject to provisions of state law and applicable
2 local ordinance.

3 (5) A certificate of franchise authority is subject to the system
4 operator's maintaining the qualifications necessary to initially obtain
5 a certificate of franchise authority. Any holder of a certificate of
6 franchise authority issued pursuant to this chapter shall immediately
7 notify the secretary of state of its failure to meet the standards
8 established for initial qualification for a certificate of franchise
9 authority and the holder's certificate of franchise authority shall be
10 deemed to be revoked by operation of law without the need for any notice,
11 hearing or action by the secretary of state. Use and occupancy by a system
12 operator of the public right-of-way in the delivery of video service shall
13 be subject to the laws of this state and the police powers of the political
14 subdivision having jurisdiction over the public right-of-way in which the
15 service is to be delivered.

16 (6) No provision of this chapter shall diminish or otherwise limit
17 the authority of a local unit of government to enact nondiscriminatory,
18 competitively neutral local laws to govern the use or maintenance of public
19 rights-of-way as otherwise provided by law. No local unit of government
20 shall unreasonably deny a holder of a certificate of franchise authority
21 the use of public rights-of-way to provide video service where a system
22 operator complies with the provisions of the applicable local ordinance or
23 ordinances governing the use of the public rights-of-way, or in the absence
24 of such ordinances, with the provisions of this chapter and other provisions
25 of state law.

26 (7) If no local ordinance regulates installation of physical
27 facilities within public rights-of-way, the following requirements
28 shall be deemed the minimum standards for such activities:

29 (a) At least thirty (30) days prior to contemplated construction within
30 public rights-of-way, a specific description of the locations where
31 facilities are proposed to be installed within the public right-of-way
32 and the construction methods that are proposed must be provided to the
33 local unit of government responsible for right-of-way procurement or
34 maintenance.

35 (b) A certificate of franchise authority granted pursuant to
36 this chapter carries with it an obligation to respect orderly
37 management and maintenance of public rights-of-way. Any video
38 service provider authorized hereby to use public rights-of-way shall
39 employ sound construction practices to maintain the integrity of
40 public improvements and preexisting right-of-way conditions and
41 shall be responsible for repair or replacement of any improvements or
42 maintenance or restoration of any conditions disrupted by construction
43 activities. The video service provider shall cause any such repairs to
44 be made promptly and in a manner that complies with adopted standards
45 or as otherwise appropriate to restore the right-of-way to conditions
46 existing before installation.

47 (c) The certificate of authority granted pursuant to this chapter
48 also carries a duty to coordinate installation of any physical
49 plant in public rights-of-way with public utilities or municipal
50 services already using or contemplating use of the same or related

1 rights-of-way. Such coordination should endeavor to minimize
2 conflicts and avoid damage to existing or otherwise planned facilities.

3 (d) No local unit of government with authority or responsibility to
4 procure or maintain public rights-of-way shall discriminate against a
5 holder of a certificate of franchise authority issued pursuant to this
6 chapter with respect to access to rights-of-way or issuance of permits
7 to install facilities in public rights-of-way.

8 (8) A certificate of franchise authority shall be nonexclusive and
9 shall be for an initial term of ten (10) years, subject to changes in federal
10 law. A certificate of franchise authority may be renewed for additional ten
11 (10) year periods for system operators in compliance with the requirements
12 in subsection (2) of this section.

13 (9) A certificate of franchise authority may be transferred to any
14 successor of the system operator to which the certificate of franchise
15 authority was initially issued upon the successor filing an application
16 containing the same information as required in subsection (2) of this
17 section. Any successor may only undertake operation and maintenance of
18 video facilities pursuant to an approved certificate of franchise authority
19 upon providing notice to the local unit of government with jurisdiction
20 concerning the public rights-of-way to be used. A successor shall be
21 responsible to conform to approved plans and permits and to coordinate
22 installation and maintenance as required by the local unit of government.

23 (10) A certificate of franchise authority may be terminated by the
24 system operator by submitting a written notice to the secretary of state and
25 any affected local unit of government. No approval of the termination of
26 the certificate of franchise authority shall be required by the secretary
27 of state or by any affected local unit of government. Termination of a
28 certificate of franchise authority shall not relieve a system operator of
29 any subsequent obligation to mitigate the effects of abandoned physical
30 facilities remaining in any public right-of-way.

31 (11) To the extent required for the purposes of 47 U.S.C. sections 521
32 through 561, the state of Idaho shall constitute the franchising authority
33 for system operators in the state of Idaho.

34 (12) No local unit of government or other political subdivision of the
35 state of Idaho may require a system operator to obtain a franchise, license,
36 permit or other authorization from the local unit of government or political
37 subdivision or impose any fee or impose any other requirement for the
38 provision of video services within the geographic territory of such local
39 unit of government or political subdivision, unless such fee or requirement
40 is expressly authorized by this chapter.

41 (13) (a) Any person may submit an application for a certificate of
42 franchise authority, including an incumbent cable service provider,
43 when applying for a certificate of franchise authority for an area in
44 a political subdivision for which area the provider does not hold a
45 franchise issued by a franchising entity prior to July 1, 2010.

46 (b) An incumbent cable service provider may submit an application
47 for a certificate of franchise authority for an area described in the
48 provider's franchise issued by a franchising entity prior to July 1,
49 2010, when:

1 (i) Such incumbent cable service provider faces actual
2 competition by another system operator within the incumbent
3 cable service provider's existing franchise area; or

4 (ii) Upon the expiration of a franchise agreement held by an
5 incumbent cable service provider prior to July 1, 2010.

6 (c) Upon the granting of a certificate of franchise authority to
7 an incumbent cable service provider for an area described in the
8 provider's franchise issued by a franchising entity prior to July 1,
9 2010, the provider's existing franchise shall no longer be of any force
10 or effect and shall not be enforceable by the local unit of government of
11 this state. The local unit of government shall promptly return to the
12 video service provider any letter of credit, performance bond, security
13 deposit, certificate of insurance or any other similar instrument.

14 (d) It shall be in an incumbent cable operator's sole discretion to
15 determine, in each area where it provides cable service, whether or
16 not to apply for a certificate of franchise authority, to continue to
17 provide service under an existing franchise or to renew an existing
18 franchise.

19 50-3004. FEES. (1) In carrying out the provisions of this chapter,
20 the secretary of state shall charge and collect the fees set forth in this
21 section.

22 (2) The filing fee for accepting an application for a certificate of
23 franchise authority shall be two hundred dollars (\$200).

24 (3) The filing fee for accepting an amendment to a certificate of
25 franchise authority shall be thirty dollars (\$30.00).

26 50-3005. HOLDER OF CERTIFICATE -- PROVISION OF SERVICE WITHIN CERTAIN
27 PERIOD -- REVOCATION OF CERTIFICATE FOR NONCOMPLIANCE. (1) Not later than
28 twenty-four (24) months after the date on which the secretary of state issues
29 a certificate of franchise authority pursuant to section 50-3003, Idaho
30 Code, the holder of the certificate must have the capability to offer and to
31 provide video service to at least one (1) subscriber who resides within the
32 territorial boundaries of each service area identified in and authorized by
33 the certificate.

34 (2) If a holder fails to comply with the provisions of subsection (1)
35 of this section, the holder's certificate of franchise authority shall be
36 deemed to be revoked by operation of law without the need for any notice,
37 hearing or action by the secretary of state.

38 50-3006. CUSTOMER ACCESS TO COMMUNITY PROGRAMMING. (1) A system
39 operator shall designate one (1) or more channels to allow the provision
40 of noncommercial public, educational and governmental (PEG) noncommercial
41 programming, as follows:

42 (a) Designate the same number of channels equal to that which has been
43 activated by an incumbent cable service provider on July 1, 2010. Such
44 channels shall be located on the same channel location on the system
45 operator's channel lineup as the incumbent cable service provider.

46 (b) If there is no incumbent cable service provider or no PEG channels
47 have been activated within the jurisdictional limits of the political

1 subdivision on July 1, 2010, the system operator shall provide a maximum
2 of two (2), in total, public, educational and governmental channels for
3 a political subdivision with a population of at least fifty thousand
4 (50,000), and one (1), in total, public, educational and governmental
5 channel for a political subdivision with a population of less than fifty
6 thousand (50,000); provided however, that a local unit of government
7 may waive the PEG requirements of this section.

8 (c) The limits set forth in paragraphs (a) and (b) of this subsection
9 (1) shall constitute the total number of PEG channels that may be
10 required of a system operator using a common headend to provide video
11 service to customers in one (1) or more political subdivisions,
12 regardless of the number of political subdivisions served by such
13 headend. The respective populations of all political subdivisions
14 served by such video service networks shall be aggregated for the
15 purpose of applying such limits.

16 (d) The PEG channels provided pursuant to subsection (1)(c) of this
17 section may be located by the system operator on any tier of service
18 subscribed to by more than fifty percent (50%) of a video provider's
19 subscribers. The PEG access channel capacity provided shall be of
20 similar quality and functionality to that offered by commercial
21 channels on such tier of service unless the signal is provided to the
22 video service provider at a lower quality or with less functionality.

23 (2) The production and content of any programming aired on any PEG
24 access channel shall be solely the responsibility of the public, educational
25 and governmental agencies receiving the benefit of such capacity. The
26 system operator shall bear the responsibility for the transmission of such
27 content only to the extent that such content complies with the requirements
28 of subsection (3) of this section.

29 (3) The public, educational or governmental agency producing the
30 PEG programming and transmitting it to the system operator shall ensure
31 that all transmissions, content or programming are provided or submitted
32 in a manner or form that is compatible with the video service provider's
33 network, as that may change from time to time. Governmental entities
34 utilizing PEG access channels shall make the programming of any PEG access
35 channels available to all video service providers providing service within
36 such governmental entity's jurisdiction in a nondiscriminatory manner.
37 Each system operator shall be responsible for providing one (1) point of
38 connectivity to the governmental entity's PEG access channel distribution
39 point within the jurisdiction to be served. The governmental entity
40 providing PEG programming may request a change of the point of connectivity
41 but shall pay the system operators all costs associated with the change of
42 the point of connectivity.

43 (4) No franchising entity may require a video service provider to
44 provide any institutional network or equivalent capacity on its video
45 service network.

46 (5) Where technically feasible, a video service provider shall
47 use reasonable efforts to interconnect its video network for the
48 purpose of sharing PEG programming with other video service providers.
49 Interconnection may be accomplished by direct cable, microwave link,
50 satellite or other reasonable method of connection. Video service providers

1 shall negotiate in good faith to provide interconnection of PEG access
2 channels. The video service provider requesting interconnection shall pay
3 all costs for such interconnection.

4 (6) A political subdivision may not require a video service provider to
5 provide any funds, services, programming, facilities or equipment related
6 to public, educational or governmental use of PEG access channel capacity.
7 The operation of any PEG access channel provided pursuant to this section
8 and the production of any programming that appears on each such channel
9 shall be the sole responsibility of the governmental entity receiving the
10 benefit of such channel, and the video service provider shall bear only the
11 responsibility for the transmission of the programming on each such channel
12 to subscribers and the initial cost of connecting to existing and obligated
13 PEG access channels.

14 50-3007. VIDEO SERVICE PROVIDER FEE. (1) Every system operator
15 acting pursuant to authorization provided in this chapter shall pay to the
16 political subdivision in which it provides video service a fee as required in
17 this section. For the purposes of this section, subscribers whose service
18 address is within the jurisdictional limits of a city shall be deemed city
19 subscribers and those subscribers whose service address is outside the
20 jurisdictional limits of a city shall be deemed county subscribers.

21 (2) The obligation to pay such fee shall commence upon commencement of
22 the provision of video service to subscribers. The video service provider's
23 fee shall be paid to the political subdivision in which it provides video
24 service on a quarterly basis, forty-five (45) days after the close of
25 each calendar quarter, and shall be calculated as a percentage of gross
26 revenues, as defined in subsection (4) of this section. Except as provided
27 in section 50-3008, Idaho Code, the political subdivision may not require
28 any additional fees or charges from the system operator and may not require
29 the use of any other calculation method.

30 (3) The percentage to be applied against gross revenues pursuant to
31 this section shall be set annually by the political subdivision in an amount
32 equal to the percentage paid by an incumbent cable service provider or five
33 percent (5%), whichever is less. If there is no incumbent cable service
34 provider having a franchise agreement with the political subdivision, or
35 if a political subdivision has not previously established and assessed
36 such fee to an incumbent cable service provider, the fee to be paid shall be
37 established annually by ordinance by the political subdivision, but shall in
38 no event be in excess of five percent (5%) of the gross revenues, as set forth
39 in subsection (4) of this section. Nothing herein prohibits a political
40 subdivision from applying a fee percentage that is less than five percent
41 (5%) so long as such fee is applicable to all video service providers within
42 the political subdivision, regardless of whether they provide video service
43 pursuant to a local franchise or a certificate of franchise authority.

44 (4) (a) For purposes of this section:

45 (i) "Gross revenues" means all revenues, calculated in
46 accordance with generally accepted accounting principles (GAAP),
47 that are received by the system operator from subscribers
48 for providing video service to video subscribers within the

1 jurisdictional limits of the political subdivision. Gross
2 revenues shall include the following:

3 1. All recurring charges and fees paid by subscribers for
4 the provision of video service, including equipment rental,
5 late fees, insufficient funds fees and fees attributable to
6 video service when sold individually or as part of a package
7 or bundle, or functionally integrated, with services other
8 than video services;

9 2. Event-based charges for video service, including
10 pay-per-view and video-on-demand;

11 3. Any other consideration a video service provider
12 receives from its subscribers for providing video service
13 when it is received in a transaction that would evade
14 imposition of a franchise fee if such consideration is not
15 included in revenue, except for revenue excluded pursuant to
16 subparagraph (ii) of this subsection (4) (a).

17 (ii) "Gross revenues" does not include:

18 1. Any revenues not actually received, even if billed, such
19 as bad debt, net of any recoveries of bad debt;

20 2. Refunds, rebates, credits or discounts to subscribers
21 or a local unit of government to the extent not already
22 offset by subparagraph (i) of this subsection (4) (a) and
23 to the extent the refund, rebate, credit or discount is
24 attributable to the video service;

25 3. Any revenues received by the system operator or its
26 affiliates from the provision of services or capabilities
27 other than video service, including advertising sales,
28 telecommunications services, information services, home
29 shopping or similar programming advertising, and services,
30 capabilities, and applications that may be sold as part of
31 a package or bundle, or functionally integrated, with video
32 service;

33 4. Any revenues received by the provider or its affiliates
34 for the provision of directory or internet advertising,
35 including yellow pages, white pages, banner advertisement
36 and electronic publishing;

37 5. Any amounts attributable to the provision of video
38 service to customers at no charge, including the provision
39 of such service to public institutions without charge;

40 6. Amounts billed to video service subscribers to recover
41 taxes, fees, surcharges or assessments imposed on a video
42 service provider or a video customer or otherwise collected
43 by a video service provider from video service subscribers
44 for pass-through to any federal, state or local government
45 agency, including the franchise fee and the FCC user fee;

46 7. Any foregone revenue from the provision of video service
47 at no charge to any person, except that any foregone revenue
48 exchanged for trade, barter, service or other item of value
49 shall be included in gross revenue;

50 8. Sales of capital assets or surplus equipment;

1 9. Reimbursement by programmers of marketing costs actually
2 incurred by the provider for the promotion of programming;
3 or

4 10. The sale of video service for resale to the extent
5 the purchaser certifies in writing that it will resell the
6 service and pay a video service provider fee with respect to
7 the service.

8 (b) In the case of a video service that is bundled or integrated
9 functionally with other services, capabilities or applications, the
10 portion of the system operator's revenue attributable to the other
11 services, capabilities or applications shall be included in gross
12 revenues unless the provider can reasonably identify the division or
13 exclusion of the revenue from its books and records that are kept in the
14 regular course of business.

15 (c) Revenue of an affiliate shall be included in the calculation of
16 gross revenues to the extent the treatment of the revenue as revenue of
17 the affiliate would have the effect of evading the payment of the video
18 service provider fee that would otherwise be paid for video service.

19 (5) Payment of the fees as required in this section shall be accompanied
20 by a written report identifying the amount of revenues by category of service
21 and the number of customers receiving each category of service, if any. A
22 political subdivision may, upon reasonable advance written notice, but
23 not more frequently than once in any calendar year, review the business
24 records of a system operator to the extent necessary to ensure proper
25 and accurate payment of the video service provider fee. A video service
26 provider shall provide sufficient information about such revenues to a
27 political subdivision to allow a proper compliance review by such political
28 subdivision. The system operator shall keep all business records reflecting
29 any gross revenues, even if there is a change in ownership, for at least three
30 (3) years after those revenues are recognized by the system operator on its
31 books and records. All records reasonably necessary for the audit shall, at
32 the discretion of the political subdivision, be made available by the system
33 operator at the location within the jurisdiction where the records are kept
34 in the ordinary course of business, or may be provided electronically to the
35 political subdivision with its consent. The political subdivision and the
36 system operator shall each be responsible for their respective costs of the
37 audit, unless the audit discloses that the system operator has underpaid
38 the video service provider fee by more than seven percent (7%) during the
39 examination period, in which case the system operator shall pay all of the
40 reasonable and actual costs of the audit. Any undisputed amount or refund
41 due to the political subdivision or the system operator shall be paid within
42 sixty (60) days, plus interest at the statutory rate on civil judgments.

43 (6) Any system operator may identify and collect the amount of the video
44 service provider fee as a separate line item on the regular bill of each
45 subscriber.

46 (7) Any city annexing lands shall notify a system operator in writing
47 of any such annexation, including a description of the territory annexed.
48 Beginning the first day of the calendar quarter occurring after the system
49 operator has received at least forty-five (45) days' notice of annexation of
50 customers into the city's corporate limits, subscribers within such annexed

1 territory shall, for purposes of this section, be considered to be city
2 subscribers.

3 50-3008. NONDISCRIMINATION BY GOVERNMENTAL ENTITIES RELATING TO
4 USE OF PUBLIC RIGHTS-OF-WAY. (1) A local unit of government shall allow
5 the holder of a certificate of franchise authority to install, construct
6 and maintain facilities within public rights-of-way, over which the local
7 unit of government has jurisdiction, to enable the provision of video
8 services to subscribers to such services. The local unit of government
9 shall provide the holder of such certificate of franchise authority open,
10 comparable, nondiscriminatory and competitively neutral access to the
11 public rights-of-way within its jurisdiction.

12 (2) A local unit of government may not discriminate against the holder
13 of a certificate of franchise authority in any manner, including:

14 (a) The authorization or placement of facilities in public
15 rights-of-way that is necessary for the provision of video services;

16 (b) Access to a public building; or

17 (c) The terms or conditions for access to any utility pole within
18 control of the jurisdiction.

19 (3) A local unit of government may impose a permit fee on a system
20 operator relating to the opening, closing, inspection or repair of public
21 rights-of-way over which rights-of-way the local unit of government has
22 jurisdiction, but only to the extent it imposes such a fee on incumbent cable
23 service providers and others accessing the public rights-of-way relating
24 to the opening, closing, inspection or repair thereof. Any fee authorized
25 in this section may not exceed the actual costs incurred by the local unit
26 of government issuing the permit that are directly related to the system
27 operator's activity in the right-of-way with which the permit is associated.
28 In no event may a fee under this subsection be charged:

29 (a) If the system operator already has paid a permit fee in connection
30 with the same activity in the public rights-of-way that would otherwise
31 be covered by the permit fee under this section; or

32 (b) For general revenue purposes.

33 50-3009. DISCRIMINATION AMONG POTENTIAL RESIDENTIAL SUBSCRIBERS
34 PROHIBITED. A system operator may not deny access to video service to any
35 group of potential residential subscribers because of the income of the
36 residents in the local area in which such group resides. The office of
37 the attorney general is hereby authorized to investigate and enforce the
38 nondiscrimination requirements as provided for in this chapter.

39 50-3010. CUSTOMER SERVICE STANDARDS. A system operator shall comply
40 with the customer service requirements set forth in 47 CFR 76.309(c), as
41 amended from time to time, and shall maintain a local or toll-free telephone
42 number for customer service contact.

43 50-3011. APPLICABILITY OF OTHER LAW. (1) The provisions of this
44 chapter are intended to be construed to be consistent with the federal cable
45 communications policy act of 1984, 47 U.S.C. sections 521 through 573.

1 (2) Except as otherwise stated herein, nothing in this chapter shall be
2 interpreted to prevent an incumbent cable service provider, a nonincumbent
3 video service provider, a system operator, a local unit of government or a
4 franchising entity from seeking clarification of its rights and obligations
5 under federal or state law or to exercise any right or authority under
6 federal or state law.

7 (3) Nothing in this chapter shall be construed to limit, abrogate
8 or supersede the provisions of titles 61 and 62, Idaho Code, regarding
9 telecommunications service within the state of Idaho, nor to require a
10 telephone corporation to obtain a certificate of franchise authority or
11 local authorization pursuant to this chapter for the purpose of permitting
12 or authorizing the telephone corporation to construct, upgrade, operate
13 or maintain its telecommunications system to provide telecommunications
14 service.

15 SECTION 2. SEVERABILITY. The provisions of this act are hereby declared
16 to be severable and if any provision of this act or the application of such
17 provision to any person or circumstance is declared invalid for any reason,
18 such declaration shall not affect the validity of the remaining portions of
19 this act.