

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 156

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, TO
4 PROVIDE FOR THE USE OF PUBLIC RIGHTS-OF-WAY, TO PROVIDE FOR MODIFICA-
5 TIONS OF EXISTING FRANCHISE AGREEMENTS, TO PROVIDE FOR FEES, TO PROVIDE
6 FOR A HOLDER OF CERTIFICATE, TO PROVIDE FOR PROVISION OF ACCESS TO VIDEO
7 SERVICE WITHIN A CERTAIN PERIOD, TO PROVIDE FOR AMENDMENT OF THE CER-
8 TIFICATE OF FRANCHISE AUTHORITY, TO PROVIDE FOR SUSPENSION OF AUTHORITY
9 FOR NONCOMPLIANCE WITH CERTAIN REQUIREMENTS, TO PROVIDE FOR A VIDEO
10 SERVICE PROVIDER FEE, TO PROVIDE FOR NONDISCRIMINATION BY GOVERNMENT-
11 TAL ENTITIES RELATING TO USE OF THE PUBLIC RIGHTS-OF-WAY, TO PROHIBIT
12 DISCRIMINATION AMONG POTENTIAL RESIDENTIAL SUBSCRIBERS, TO PROVIDE FOR
13 CUSTOMER SERVICE STANDARDS, TO PROVIDE FOR DESIGNATION AND USE OF CHAN-
14 NEL CAPACITY FOR PUBLIC, EDUCATIONAL OR GOVERNMENTAL USE AND TO PROVIDE
15 FOR APPLICABILITY OF OTHER LAW; AND PROVIDING SEVERABILITY.
16

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

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

21 CHAPTER 30
22 IDAHO VIDEO SERVICE ACT

23 50-3001. SHORT TITLE. This chapter shall be known and may be cited as
24 the "Idaho Video Service Act."

25 50-3002. DEFINITIONS. As used in this chapter:

26 (1) "Access to video service" means the capability of a video service
27 provider to provide video service at a household address irrespective of
28 whether a subscriber has ordered the service or whether the service is actu-
29 ally provided at that address.

30 (2) "Actual competition" means the physical installation and activa-
31 tion of a network to provide video service by a nonincumbent video service
32 provider anywhere within a political subdivision in which there is an incum-
33 bent cable service provider.

34 (3) "Cable service" has the meaning ascribed to it in 47 U.S.C. section
35 522, as that section existed on January 1, 2011.

36 (4) "Cable system" has the meaning ascribed to it in 47 U.S.C. section
37 522, as that section existed on January 1, 2011.

38 (5) "Certificate of franchise authority" means a certificate issued by
39 the Idaho secretary of state to a video service provider pursuant to the pro-
40 visions of this chapter.

1 (6) "Franchise" has the meaning ascribed to it in 47 U.S.C. section 522,
2 as that section existed on January 1, 2011. A certificate of franchise au-
3 thority issued pursuant to section 50-3003, Idaho Code, shall constitute a
4 franchise for the purposes of 47 U.S.C. section 522.

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

7 (8) "Governing body" means the city council or the board of county com-
8 missioners of a political subdivision.

9 (9) "Incumbent cable service provider" means a person who provides ca-
10 ble service and holds a franchise issued by a franchising entity prior to
11 July 1, 2011.

12 (10) "Local unit of government" means a city, county or other governmen-
13 tal entity of the state of Idaho having maintenance and operation responsi-
14 bility over the public rights-of-way within an area for which a franchise or
15 certificate of franchise authority has been issued by a franchising entity.

16 (11) "Nonincumbent video service provider" means:

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

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

23 (12) "Political subdivision" means a city or county of the state of
24 Idaho.

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

28 (14) "Service area" means contiguous geographical territory in the
29 state of Idaho within which territory a video service provider is authorized
30 to provide video service pursuant to a certificate of franchise authority.

31 (15) "Service tier" means a category of video service or those services
32 provided by a video service provider and for which a separate rate is charged
33 by the video service provider.

34 (16) "Subscriber" means any person in this state who purchases video
35 service. "Subscriber" does not include any person who purchases video ser-
36 vice for resale and who, upon resale, is required to pay a video service
37 provider fee pursuant to this chapter or the terms of a local franchise.

38 (17) "System operator" means any person or group of persons who provide
39 video service and directly, or through one (1) or more affiliates, own a sig-
40 nificant interest in the system or facilities through which the video ser-
41 vice is provided and which person has been issued a certificate of franchise
42 authority pursuant to the provisions of this chapter.

43 (18) "Video service" means the provision of video programming generally
44 considered comparable to video programming delivered by a television broad-
45 cast station, cable service or digital television service, without regard to
46 the technology used to deliver the video service, and which service is pro-
47 vided primarily through equipment or facilities located in whole or in part
48 in, on, under or over any public rights-of-way. The term includes cable ser-
49 vice, but excludes any video programming provided to persons in their capac-
50 ity as subscribers to commercial mobile service as defined in 47 U.S.C. sec-

1 tion 332(d), or video programming provided as part of and via a service that
 2 enables end users to access content, information, electronic mail or other
 3 services offered over the public internet.

4 (19) "Video service provider" means a provider of video service, and in-
 5 cludes an incumbent cable or multichannel video service provider, a nonin-
 6 cumbent video service provider or a system operator, unless the context in
 7 which the term is used indicates otherwise.

8 (20) "Video service provider fee" means the amount paid by a system op-
 9 erator pursuant to section 50-3006, Idaho Code.

10 50-3003. FRANCHISING AUTHORITY -- USE OF PUBLIC RIGHTS-OF-WAY -- MOD-
 11 IFICATIONS OF EXISTING FRANCHISE AGREEMENTS. (1) On and after July 1, 2011,
 12 no person shall act as a video service provider or operate a video service
 13 network within the state of Idaho unless such person:

14 (a) Is an incumbent cable service provider providing cable service
 15 within an existing franchise area by permission of, or pursuant to, a
 16 franchise from a political subdivision in effect on the effective date
 17 of this chapter or a subsequent renewal thereof; or

18 (b) Has been granted a certificate of franchise authority to do busi-
 19 ness in the state of Idaho as a system operator by the Idaho secretary of
 20 state as required in this chapter.

21 (2) Any person seeking a certificate of franchise authority to provide
 22 video service shall submit an application to the Idaho secretary of state
 23 that is in accord with the requirements of this chapter and sets forth the
 24 following information:

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

28 (b) A specific identification of the political subdivision(s), or por-
 29 tion thereof, constituting the service area wherein the applicant in-
 30 tends to provide video service;

31 (c) The date on which the applicant intends to begin providing video
 32 service in the service area described in the application;

33 (d) Verification signed by an officer or general partner of the appli-
 34 cant that:

35 (i) The applicant has filed with the federal communications com-
 36 mission all forms required by that agency in advance of offering
 37 video service in this state; and

38 (ii) The applicant is legally, financially and technically qual-
 39 ified to provide video service; provided however, that a cable
 40 operator that was providing service in Idaho pursuant to a fran-
 41 chise in effect on the day before the effective date of this
 42 section shall be deemed to be legally, financially and technically
 43 qualified to provide service; and

44 (e) Verification that the applicant has procured and will maintain
 45 comprehensive general liability insurance coverage and automobile li-
 46 ability insurance coverage underwritten by one (1) or more companies
 47 licensed to do business in the state of Idaho requiring that the insur-
 48 ance carrier pay on behalf of the applicant, to a limit of not less than
 49 five hundred thousand dollars (\$500,000) for bodily or personal injury,

1 death, or property damage or loss as a result of any one (1) occurrence
2 or accident, regardless of the number of persons injured or the number
3 of claimants, arising out of the negligent or otherwise wrongful act
4 or omission of the applicant or applicant's employees or agents. Ver-
5 ification that a certificate of self-insurance has been issued to the
6 applicant and maintained in accordance with the provisions of section
7 49-1224, Idaho Code, shall be deemed to satisfy the requirements of this
8 subsection.

9 (3) The application shall be accompanied by a filing fee as set forth in
10 section 50-3004, Idaho Code. Within thirty (30) days after filing of the ap-
11 plication, or within (30) days after the filing of supplemental information
12 necessary to make it complete, the secretary of state shall determine the
13 completeness of an application or, if applicable, shall notify the appli-
14 cant of a determination that the application is incomplete, state the basis
15 for that determination, and inform the applicant that the applicant may re-
16 submit a correct application. The secretary of state shall issue a certifi-
17 cate of franchise authority within fifteen (15) days after the secretary of
18 state's determination that the filed application is complete and in compli-
19 ance. Upon issuance of a certificate of franchise authority, the secretary
20 of state shall, within fifteen (15) days from the date of such issuance, pro-
21 vide written notice of such issuance to the governing body of each political
22 subdivision located, in whole or in part, within the service area designated
23 in the application for a certificate of franchise authority. The duties of
24 the secretary of state pursuant to this chapter are ministerial.

25 (4) Persons who have received a certificate of franchise authority as
26 set forth in this section may use the public rights-of-way of the state and
27 any political subdivision within the service area set forth in the certifi-
28 cate of franchise authority, subject to provisions of state law and appli-
29 cable local ordinances that are not in conflict with the provisions of this
30 chapter or the purposes or objectives thereof.

31 (5) If the holder of a certificate of franchise authority wants to mod-
32 ify the boundaries of an existing service area authorized under the certifi-
33 cate, the holder must file with the secretary of state written notice of the
34 modification and pay the fee required by section 50-3004, Idaho Code. The
35 holder of the certificate may make the modification on the date on which it
36 files the written notice with the secretary of state.

37 (6) A certificate of franchise authority is subject to the system oper-
38 ator's maintaining the qualifications necessary to initially obtain a cer-
39 tificate of franchise authority. Any holder of a certificate of franchise
40 authority issued pursuant to this chapter shall immediately notify the sec-
41 retary of state of the holder's failure to meet the standards established for
42 initial qualification for a certificate of franchise authority. Upon re-
43 ceipt of the notice by the office of the secretary of state, the holder's cer-
44 tificate of franchise authority shall be deemed to be revoked by operation
45 of law without the need for any notice, hearing or action by the secretary of
46 state. Use and occupancy by a system operator of the public rights-of-way in
47 the delivery of video service shall be subject to the laws of this state and
48 the police powers of the local units of government having jurisdiction over
49 the public rights-of-way in which the video service is to be delivered.

1 (7) No provision of this chapter shall diminish or otherwise limit the
2 authority of this state, highway district or other local unit of government
3 having jurisdiction over the public rights-of-way. Nothing in this chapter
4 shall be construed to limit, abrogate or supersede the provisions of any ap-
5 plicable local ordinance or other regulation governing the use of the public
6 rights-of-way.

7 (8) If no local ordinance or law regulates installation of physical fa-
8 cilities within public rights-of-way, the following requirements shall be
9 deemed the minimum standards for such activities:

10 (a) At least thirty (30) days prior to contemplated construction within
11 public rights-of-way, a specific description of the locations where the
12 facilities are proposed to be installed within the public rights-of-way
13 and the construction methods that are proposed must be provided to the
14 local unit of government responsible for rights-of-way procurement or
15 maintenance.

16 (b) A certificate of franchise authority granted pursuant to this
17 chapter carries with it an obligation to respect orderly management
18 and maintenance of public rights-of-way. Any video service provider
19 authorized hereby to use public rights-of-way shall employ sound con-
20 struction practices to maintain the integrity of public improvements
21 and preexisting rights-of-way conditions and shall be responsible for
22 repair or replacement of any improvements or maintenance or restoration
23 of any conditions disrupted by construction activities. The video ser-
24 vice provider shall cause any such repairs to be made promptly and in a
25 manner that complies with adopted standards or as otherwise appropriate
26 to restore the rights-of-way to conditions existing before installa-
27 tion.

28 (c) The certificate of authority granted pursuant to this chapter also
29 carries a duty to coordinate installation of any physical plant in pub-
30 lic rights-of-way with the public utilities or municipal services al-
31 ready using or contemplating use of the same or related rights-of-way.
32 Such coordination should endeavor to minimize conflicts and avoid dam-
33 age to existing or otherwise planned facilities.

34 (d) No local unit of government with authority or responsibility to
35 procure or maintain public rights-of-way shall discriminate against a
36 holder of a certificate of franchise authority issued pursuant to this
37 chapter with respect to access to rights-of-way or issuance of permits
38 to install facilities in public rights-of-way.

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

44 (10) A certificate of franchise authority may be transferred to any suc-
45 cessor of the system operator to which the certificate of franchise author-
46 ity was initially issued upon the successor filing an application contain-
47 ing the same information as required in subsection (2) of this section. Any
48 successor may only undertake operation and maintenance of video facilities
49 pursuant to an approved certificate of franchise authority upon providing
50 notice to the local unit of government with jurisdiction concerning the pub-

1 lic rights-of-way to be used. A successor shall be responsible to conform to
2 approved plans and permits to coordinate installation and maintenance as re-
3 quired by the local unit of government.

4 (11) A certificate of franchise authority may be terminated by the
5 system operator submitting a written notice to the secretary of state and
6 any affected local unit of government. No approval of the termination of
7 the certificate of franchise authority shall be required by the secretary
8 of state or by any affected local unit of government. Termination of cer-
9 tificate of franchise authority shall not relieve a system operator of any
10 subsequent obligation to mitigate the effects of abandoned physical facili-
11 ties remaining in any public rights-of-way.

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

15 (13) No political subdivision of the state of Idaho may require a system
16 operator to obtain a franchise or impose any fee or impose any other require-
17 ment for the provision of video services within the geographic territory of
18 such political subdivision, unless such fee or requirement is expressly au-
19 thorized by this chapter.

20 (14) Any person may submit an application for a certificate of franchise
21 authority, including an incumbent cable service provider, when such incum-
22 bent cable service provider faces actual competition by another system oper-
23 ator, upon the expiration of a franchise agreement held by an incumbent ca-
24 ble service provider, or in a political subdivision where an incumbent cable
25 service provider does not hold a certificate of franchise authority as of the
26 date of this chapter. Upon the granting of a certificate of franchise au-
27 thority to an incumbent cable service provider the provider's existing fran-
28 chise shall no longer be of any force or effect and shall not be enforceable
29 by the local unit of government of this state. The local unit of government
30 shall promptly return to the video service provider any letter of credit,
31 performance bond, security deposit, certificate of insurance or any other
32 similar instrument. It shall be in an incumbent cable operator's sole dis-
33 cretion to determine, in each area where it provides cable service, whether
34 or not to apply for a certificate of franchise authority or continue to pro-
35 vide service under an existing certificate of franchise authority.

36 50-3004. FEES. (1) In carrying out the provisions of this chapter, the
37 secretary of state shall charge and collect the fees set forth in this sec-
38 tion.

39 (2) The filing fee for accepting an application for a certificate of
40 franchise authority shall be one thousand dollars (\$1,000).

41 (3) The filing fee for accepting an amendment to a certificate of fran-
42 chise authority or providing a notice required by this chapter shall be five
43 hundred dollars (\$500).

44 50-3005. HOLDER OF CERTIFICATE -- PROVISION OF ACCESS TO VIDEO SERVICE
45 WITHIN CERTAIN PERIOD -- AMENDMENT OF CERTIFICATE OF FRANCHISE AUTHORITY --
46 SUSPENSION OF AUTHORITY FOR NONCOMPLIANCE WITH CERTAIN REQUIREMENTS. (1)
47 Not later than twenty-four (24) months after the date on which the secretary
48 of state issues a certificate of franchise authority pursuant to section

1 50-3003, Idaho Code, the holder of the certificate must provide access to
2 video service to at least one (1) household within the territorial bound-
3 aries of each service area identified in and authorized by the certificate
4 of franchise authority.

5 (2) If a holder of a certificate of franchise authority does not pro-
6 vide access to video service within the territorial boundaries of a service
7 area within twenty-four (24) months from the date the certificate of fran-
8 chise authority authorized the provision of video service within the service
9 area, the holder's certificate of franchise authority shall be deemed to be
10 revoked by operation of law as to such service area without the need for any
11 notice, hearing or action by the secretary of state and such certificate of
12 franchise authority shall not thereafter authorize the provision of video
13 service within such service area by the holder of the certificate.

14 50-3006. VIDEO SERVICE PROVIDER FEE. (1) Every system operator acting
15 pursuant to authorization provided in this chapter shall pay to the politi-
16 cal subdivision in which it provides video service a fee as required in this
17 section. For the purposes of this section, subscribers whose service ad-
18 dress is within the jurisdictional limits of a city shall be deemed city sub-
19 scribers and those subscribers whose service address is outside the juris-
20 dictional limits of a city shall be deemed county subscribers.

21 (2) The obligation to pay such a 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 each
25 calendar quarter, and shall be calculated as a percentage of gross revenues,
26 as defined in subsection (4) of this section. Except as provided in sec-
27 tion 50-3007, Idaho Code, the political subdivision may not require any ad-
28 ditional fees or charges from the system operator and may not require the use
29 of any other calculation method.

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

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

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

1 limits of the political subdivision. Gross revenues shall include
2 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 re-
12 ceives from its subscribers for providing video service when
13 it is received in a transaction that would evade imposition
14 of a franchise fee if such consideration is not included in
15 revenue, except for revenue excluded pursuant to subpara-
16 graph (ii) of this subsection.

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 or
21 a local unit of government to the extent not already offset
22 by subparagraph (i) of this subsection and to the extent the
23 refund, rebate, credit or discount is attributable to the
24 video service;

25 3. Any revenues received by the system operator or its af-
26 filiates 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 a
31 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, in-
35 cluding yellow pages, white pages, banner advertisement and
36 electronic publishing;

37 5. Any amounts attributable to the provision of video ser-
38 vice to customers at no charge, including the provision of
39 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 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 introduction of program-
3 ming; or

4 10. The sale of video service for resale to the extent the
5 purchaser certifies in writing that it will resell the ser-
6 vice and pay a video service provider fee with respect to the
7 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 ser-
11 vices, capabilities or applications shall be included in gross revenues
12 unless the provider can reasonably identify the division or exclusion
13 of the revenue from its books and records that are kept in the regular
14 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 a ser-
21 vice and the number of customers receiving each category of service, if any.
22 A political subdivision may, upon reasonable advance written notice, but not
23 more frequently than once in any calendar year, review the business records
24 of a system operator to the extent necessary to ensure proper and accurate
25 payment of the video service provider fee. A video service provider shall
26 provide sufficient information about such revenues to a political subdivi-
27 sion to allow a proper compliance review by such political subdivision. The
28 system operator shall keep all business records reflecting any gross rev-
29 enues, even if there is a change in ownership, for at least three (3) years
30 after those revenues are recognized by the system operator in its books and
31 records. All records reasonably necessary for the audit shall, at the dis-
32 cretion of the political subdivision, be made available by the system opera-
33 tor at the location within the jurisdiction where the records are kept in the
34 ordinary course of business, or may be provided electronically to the polit-
35 ical subdivision with its consent. The political subdivision and the system
36 operator shall each be responsible for their respective costs of the audit,
37 unless the audit discloses that the system operator has underpaid the video
38 service provider fee by more than seven percent (7%) during the examination
39 period, in which case the system operator shall pay all of the reasonable and
40 actual costs of the audit. Any undisputed amount or refund due to the polit-
41 ical subdivision or the system operator shall be paid within sixty (60) days,
42 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 sub-
45 scriber.

46 (7) Any city annexing lands shall notify a system operator in writing of
47 any such annexation, including a description of the territory annexed. Be-
48 ginning the first day of the calendar quarter occurring after the system op-
49 erator 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 sub-
2 scribers.

3 50-3007. NONDISCRIMINATION BY GOVERNMENTAL ENTITIES RELATING TO USE
4 OF PUBLIC RIGHTS-OF-WAY. (1) A local unit of government shall allow the
5 holder of a certificate of franchise authority to install, construct and
6 maintain facilities within the public rights-of-way, over which the local
7 unit of government has jurisdiction, to enable the provision of video ser-
8 vices to subscribers to such services. The local unit of government shall
9 provide the holder of such certificate of franchise authority open, com-
10 parable, nondiscriminatory and competitively neutral access to the public
11 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 rights-of-
15 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 con-
18 trol of the jurisdiction.

19 (3) A local unit of government may impose a permit or license fee on a
20 system operator relating to the opening, closing, inspection or repair of
21 public rights-of-way over which rights-of-way the local unit of government
22 has jurisdiction, but only to the extent it imposes such a fee on incumbent
23 cable service providers or others accessing the public rights-of-way relat-
24 ing to the opening, closing, inspection or repair thereof. Any fee autho-
25 rized in this section may not exceed the actual costs incurred by the local
26 unit of government issuing the permit that are directly related to the sys-
27 tem operator's activity in the rights-of-way with which the permit is asso-
28 ciated. 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 50-3008. DISCRIMINATION AMONG POTENTIAL RESIDENTIAL SUBSCRIBERS PRO-
34 HIBITED. A system operator may not deny access to video service to any group
35 of potential residential subscribers because of the income of the residents
36 in the local area in which such group resides. The office of the attorney
37 general is hereby authorized to investigate and enforce the nondiscrimina-
38 tion requirements as provided in this chapter.

39 50-3009. 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 50-3010. DESIGNATION AND USE OF CHANNEL CAPACITY FOR PUBLIC, EDUCA-
44 TIONAL OR GOVERNMENTAL USE. (1) On or after the date on which a video service
45 provider first provides video service to at least one (1) subscriber within
46 the service area of a political subdivision, a system operator shall desig-

1 nate one (1) or more channels for public, educational or governmental (PEG)
2 use, as follows:

3 (a) Designate channels for PEG use equal in number to those that have
4 been activated by an incumbent cable service provider on the date on
5 which the system operator first provides video service to at least one
6 (1) subscriber within such political subdivision.

7 (b) If there is no incumbent cable service provider or no channels
8 for PEG use have been activated within the jurisdictional limits of
9 the political subdivision located within the video service provider's
10 service area on the date on which the video service provider first pro-
11 vides video service to at least one (1) subscriber therein, the video
12 service provider shall, upon request, provide a maximum of two (2), in
13 total, PEG channels for a political subdivision with a population of at
14 least fifty thousand (50,000), and one (1), in total, PEG channels for
15 a political subdivision with a population of less than fifty thousand
16 (50,000); provided however, that a political subdivision may waive PEG
17 requirements of this section.

18 (c) The number of PEG channels set forth in paragraphs (a) and (b) of
19 this subsection shall constitute the total number of PEG channels that
20 a system operator may be required to designate on any single head-end or
21 hub office, or on all commonly owned video service networks that share
22 a common head-end or hub office, regardless of the number of political
23 subdivisions served from that head-end or hub office. If more than one
24 (1) political subdivision is served by a single or common head-end or
25 hub office, the populations within the jurisdictions of all those po-
26 litical subdivisions shall be aggregated to determine the total number
27 of PEG access channels under subsection (1) (a) and (b) of this section.

28 (d) Channels for PEG use provided by a video service provider may be lo-
29 cated by the video service provider on any service tier subscribed to by
30 more than fifty percent (50%) of a video service provider's subscribers
31 or may be provided as an on-demand service which is available to its sub-
32 scribers without an additional charge. Channels for PEG use shall be of
33 similar quality and functionality to that offered by commercial chan-
34 nels on such tier of service unless the signal is provided to the video
35 service provider at a lower quality or with less functionality.

36 (2) The production and content of any programming aired on any channel
37 provided for PEG use shall be solely the responsibility of the public, edu-
38 cational and governmental agencies receiving the benefit of such capacity.
39 The video service provider shall bear the responsibility for the transmis-
40 sion of such content only to the extent that such content complies with the
41 requirements of subsection (3) of this section.

42 (3) The public, educational or governmental agency producing the PEG
43 programming and transmitting it to the video service provider shall ensure
44 that all transmissions, content or programming are provided or submitted in
45 a manner or form that is compatible with the video service provider's net-
46 work, as that may change from time to time. Governmental entities utiliz-
47 ing channels for PEG use shall make the programming of any PEG channel avail-
48 able to all video service providers providing service within such governmen-
49 tal entity's jurisdiction in a nondiscriminatory manner. Each system oper-
50 ator shall be responsible for providing one (1) point of connectivity to the

1 governmental entity's PEG channel distribution point within the jurisdic-
2 tion to be served. The governmental entity providing programming for use on
3 a channel designated for PEG use may request a change of the point of con-
4 nectivity but shall pay the system operators all costs associated with the
5 change of the point of connectivity.

6 (4) No franchising entity may hereafter require a video service
7 provider to provide any institutional network or equivalent capacity on its
8 video service network.

9 (5) Where technically feasible, a video service provider shall use rea-
10 sonable efforts to interconnect its video network for the purpose of sharing
11 PEG programming with other video service providers. Interconnection may be
12 accomplished by direct cable, microwave link, satellite or other reasonable
13 method of connection. Video service providers shall negotiate in good faith
14 to provide interconnection of PEG channels. The video service provider re-
15 questing interconnection shall pay all costs for such interconnection.

16 (6) A political subdivision may not require a video service provider to
17 provide any funds, services, programming, facilities or equipment related
18 to public, educational or governmental use of PEG channel capacity desig-
19 nated for PEG use. The operation of any PEG channel provided pursuant to
20 this section and the production of any programming that appears on each such
21 channel shall be the sole responsibility of the governmental entity receiv-
22 ing the benefit of such channel, and the video service provider shall bear
23 only the responsibility for the transmission of the programming on each such
24 channel to subscribers and the initial cost of connecting to existing and ob-
25 ligated PEG access channels.

26 50-3011. APPLICABILITY OF OTHER LAW. (1) The provisions of this chap-
27 ter are intended to be construed to be consistent with the federal cable com-
28 munications policy act of 1984, 47 U.S.C. sections 521 through 573.

29 (2) Except as otherwise stated herein, nothing in this chapter shall be
30 interpreted to prevent an incumbent cable service provider, a nonincumbent
31 video service provider, a system operator, a local unit of government or a
32 franchising entity from seeking clarification of its rights and obligations
33 under federal or state law or to exercise any right or authority under fed-
34 eral or state law.

35 (3) Nothing in this chapter shall be construed to limit, abrogate or su-
36 persede the provisions of titles 61 and 62, Idaho Code, regarding telecom-
37 munications service within the state of Idaho, nor to require a telephone
38 corporation to obtain a certificate of franchise authority or local author-
39 ization pursuant to this chapter for the purpose of permitting or authoriz-
40 ing the telephone corporation to construct, upgrade, operate or maintain its
41 telecommunications system to provide telecommunications service.

42 SECTION 2. SEVERABILITY. The provisions of this act are hereby declared
43 to be severable and if any provision of this act or the application of such
44 provision to any person or circumstance is declared invalid for any reason,
45 such declaration shall not affect the validity of the remaining portions of
46 this act.