

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 320

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 GOVERNMEN-
11 TAL ENTITIES RELATING TO USE OF THE PUBLIC RIGHTS-OF-WAY, TO PROHIBIT
12 DISCRIMINATION AMONG POTENTIAL RESIDENTIAL SUBSCRIBERS AND TO PROVIDE
13 FOR VIOLATIONS, TO PROVIDE FOR CUSTOMER SERVICE STANDARDS, TO PROVIDE
14 FOR DESIGNATION AND USE OF CHANNEL CAPACITY FOR PUBLIC, EDUCATIONAL
15 OR GOVERNMENTAL USE AND TO PROVIDE FOR APPLICABILITY OF OTHER LAW; AND
16 PROVIDING SEVERABILITY.
17

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

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

22 CHAPTER 30
23 IDAHO VIDEO SERVICE ACT

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

26 50-3002. DEFINITIONS. As used in this chapter:

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

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

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

37 (4) "Cable system" has the meaning ascribed to it in 47 U.S.C. section
38 522, as that section existed on January 1, 2011.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46 (18) "Video service" means the provision of video programming generally
47 considered comparable to video programming delivered by a television broad-
48 cast station, cable service or digital television service, without regard to
49 the technology used to deliver the video service, and which service is pro-
50 vided primarily through equipment or facilities located in whole or in part

1 in, on, under or over any public rights-of-way. The term includes cable ser-
 2 vice, but excludes any video programming provided to persons in their capac-
 3 ity as subscribers to commercial mobile service as defined in 47 U.S.C. sec-
 4 tion 332 (d), or video programming provided as part of and via a service that
 5 enables end users to access content, information, electronic mail or other
 6 services offered over the public internet.

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

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

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

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

21 (b) Is a nonincumbent cable service provider who:

22 (i) Has elected to negotiate a franchise agreement in accordance
 23 with title VI of the communications act of 1934, as amended, 47
 24 U.S.C. section 521 et seq., with a political subdivision that es-
 25 tablishes the terms and conditions applicable to that person to
 26 provide cable or video service within the jurisdictional bound-
 27 aries of such political subdivision and has been issued a fran-
 28 chise from the political subdivision for such purpose; or

29 (ii) Has elected to adopt the terms and conditions of an existing
 30 franchise issued by a political subdivision to an incumbent cable
 31 service provider providing video service within the same service
 32 area and who has been issued a franchise from the political sub-
 33 division authorizing the video service provider to provide video
 34 services within the political subdivision pursuant to the same
 35 terms and conditions as the franchise issued to the incumbent ca-
 36 ble service provider in the political subdivision; or

37 (c) Has been granted a certificate of franchise authority to do busi-
 38 ness in the state of Idaho as a system operator by the Idaho secretary of
 39 state as required in this chapter.

40 (2) Nothing in this chapter shall be construed to prohibit a person from
 41 holding a franchise issued by a political subdivision and holding a certifi-
 42 cate of franchise authority issued by the Idaho secretary of state for a dif-
 43 ferent service area. Provided however, that a video service provider shall
 44 not hold a franchise issued by a political subdivision and a certificate of
 45 franchise authority issued by the secretary of state for the same service
 46 area.

47 (3) Any person seeking a certificate of franchise authority to provide
 48 video service as a system operator shall submit an application to the Idaho

1 secretary of state that is in accordance with the requirements of this chap-
2 ter and sets forth the following information:

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

6 (b) A specific identification of the political subdivision(s) consti-
7 tuting the service area wherein the applicant intends to provide video
8 service;

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

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

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

16 (ii) The applicant is legally, financially and technically qual-
17 ified to provide video service; provided however, that a cable
18 operator that was providing service in Idaho pursuant to a fran-
19 chise in effect on the day before the effective date of this
20 section shall be deemed to be legally, financially and technically
21 qualified to provide service; and

22 (e) Verification that the applicant has procured and will maintain
23 comprehensive general liability insurance coverage and automobile li-
24 ability insurance coverage underwritten by one (1) or more companies
25 licensed to do business in the state of Idaho requiring that the insur-
26 ance carrier pay on behalf of the applicant, to a limit of not less than
27 five hundred thousand dollars (\$500,000) for bodily or personal injury,
28 death, or property damage or loss as a result of any one (1) occurrence
29 or accident, regardless of the number of persons injured or the number
30 of claimants, arising out of the negligent or otherwise wrongful act
31 or omission of the applicant or applicant's employees or agents. Ver-
32 ification that a certificate of self-insurance has been issued to the
33 applicant and maintained in accordance with the provisions of section
34 49-1224, Idaho Code, shall be deemed to satisfy the requirements of this
35 subsection.

36 (4) The application shall be accompanied by a filing fee as set forth
37 in section 50-3004, Idaho Code. Within thirty (30) days after filing of the
38 application, or within thirty (30) days after the filing of supplemental
39 information necessary to make it complete, the secretary of state shall de-
40 termine the completeness of an application or, if applicable, shall notify
41 the applicant of a determination that the application is incomplete, state
42 the basis for that determination, and inform the applicant that the appli-
43 cant may resubmit a correct application. The secretary of state shall issue
44 a certificate of franchise authority within fifteen (15) days after the
45 secretary of state's determination that the filed application is complete
46 and in compliance. Upon issuance of a certificate of franchise authority,
47 the secretary of state shall, within fifteen (15) days from the date of such
48 issuance, provide written notice of such issuance to the governing body
49 of each political subdivision located within the service area designated
50 in the application for a certificate of franchise authority. Such notice

1 shall contain a provision stating that a political subdivision may assess
2 a video service provider fee in accordance with the provisions of section
3 50-3006, Idaho Code, may define "gross revenues" in accordance with section
4 50-3006(4), Idaho Code, and may assess a public, educational or governmen-
5 tal support fee in accordance with the provisions of section 50-3010, Idaho
6 Code. The duties of the secretary of state pursuant to this chapter are min-
7 isterial.

8 (5) Persons who have received a certificate of franchise authority as
9 set forth in this section may use the public rights-of-way of the state and
10 any political subdivision within the service area set forth in the certifi-
11 cate of franchise authority, subject to provisions of state law and appli-
12 cable local ordinances that are not in conflict with the provisions of this
13 chapter or the purposes or objectives thereof.

14 (6) If the holder of a certificate of franchise authority wants to mod-
15 ify the boundaries of an existing service area authorized under the certifi-
16 cate, the holder must file with the secretary of state written notice of the
17 modification and pay the fee required by section 50-3004, Idaho Code. The
18 holder of the certificate may make the modification on the date on which it
19 files the written notice with the secretary of state.

20 (7) A certificate of franchise authority is subject to the system oper-
21 ator's maintaining the qualifications necessary to initially obtain a cer-
22 tificate of franchise authority. Any holder of a certificate of franchise
23 authority issued pursuant to this chapter shall immediately notify the sec-
24 retary of state of the holder's failure to meet the standards established for
25 initial qualification for a certificate of franchise authority. Upon re-
26 ceipt of the notice by the office of the secretary of state, the holder's cer-
27 tificate of franchise authority shall be deemed to be revoked by operation
28 of law without the need for any notice, hearing or action by the secretary of
29 state. Use and occupancy by a system operator of the public rights-of-way in
30 the delivery of video service shall be subject to the laws of this state and
31 the police powers of the local units of government having jurisdiction over
32 the public rights-of-way in which the video service is to be delivered.

33 (8) No provision of this chapter shall diminish or otherwise limit the
34 authority of this state, highway district or other local unit of government
35 having jurisdiction over the public rights-of-way. Nothing in this chapter
36 shall be construed to limit, abrogate or supersede the provisions of any ap-
37 plicable local ordinance or other regulation governing the use of the public
38 rights-of-way.

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

42 (a) At least thirty (30) days prior to contemplated construction within
43 public rights-of-way, a specific description of the locations where the
44 facilities are proposed to be installed within the public rights-of-way
45 and the construction methods that are proposed must be provided to the
46 local unit of government responsible for rights-of-way procurement or
47 maintenance.

48 (b) A certificate of franchise authority granted pursuant to this
49 chapter carries with it an obligation to respect orderly management and
50 maintenance of public rights-of-way. Any system operator authorized

1 hereby to use public rights-of-way shall employ sound construction
2 practices to maintain the integrity of public improvements and preex-
3 isting rights-of-way conditions and shall be responsible for repair or
4 replacement of any improvements or maintenance or restoration of any
5 conditions disrupted by construction activities. The system operator
6 shall cause any such repairs to be made promptly and in a manner that
7 complies with adopted standards or as otherwise appropriate to restore
8 the rights-of-way to conditions existing before installation.

9 (c) The certificate of franchise authority granted pursuant to this
10 chapter also carries a duty to coordinate installation of any physical
11 plant in public rights-of-way with the public utilities or municipal
12 services already using or contemplating use of the same or related
13 rights-of-way. Such coordination should endeavor to minimize con-
14 flicts and avoid damage to existing or otherwise planned facilities.

15 (d) No local unit of government with authority or responsibility to
16 procure or maintain public rights-of-way shall discriminate against a
17 holder of a certificate of franchise authority issued pursuant to this
18 chapter with respect to access to rights-of-way or issuance of permits
19 to install facilities in public rights-of-way.

20 (10) A certificate of franchise authority shall be nonexclusive and
21 shall be for an initial term of ten (10) years, subject to changes in federal
22 law. A certificate of franchise authority may be renewed for additional ten
23 (10) year periods for system operators in compliance with the requirements
24 of subsection (3) of this section.

25 (11) A certificate of franchise authority may be transferred to any suc-
26 cessor of the system operator to which the certificate of franchise author-
27 ity was initially issued upon the successor filing an application contain-
28 ing the same information as required in subsection (3) of this section. Any
29 successor may only undertake operation and maintenance of video facilities
30 pursuant to an approved certificate of franchise authority upon providing
31 notice to the local unit of government with jurisdiction concerning the pub-
32 lic rights-of-way to be used. A successor shall be responsible to conform to
33 approved plans and permits to coordinate installation and maintenance as re-
34 quired by the local unit of government.

35 (12) A certificate of franchise authority may be terminated by the
36 system operator submitting a written notice to the secretary of state and
37 any affected local unit of government. No approval of the termination of
38 the certificate of franchise authority shall be required by the secretary
39 of state or by any affected local unit of government. Termination of cer-
40 tificate of franchise authority shall not relieve a system operator of any
41 subsequent obligation to mitigate the effects of abandoned physical facili-
42 ties remaining in any public rights-of-way.

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

46 (14) Unless otherwise set forth in a franchise agreement described in
47 subsection (1) (a) or (b) of this section, no political subdivision of the
48 state of Idaho may require a system operator to obtain a franchise or impose
49 any fee or impose any other requirement for the provision of video services

1 within the geographic territory of such political subdivision, unless such
2 fee or requirement is expressly authorized by this chapter.

3 (15) Any person may submit an application for a certificate of franchise
4 authority, including an incumbent cable service provider, when such incum-
5 bent cable service provider faces actual competition by another system oper-
6 ator, upon the expiration of a franchise agreement held by an incumbent ca-
7 ble service provider, or in a political subdivision where an incumbent ca-
8 ble service provider does not hold a certificate of franchise authority as
9 of the date of this chapter. Upon the granting of a certificate of fran-
10 chise authority to an incumbent cable service provider, the provider's ex-
11 isting franchise shall no longer be of any force or effect and shall not be
12 enforceable by the local unit of government of this state. The local unit
13 of government shall promptly return to the video service provider any letter
14 of credit, performance bond, security deposit, certificate of insurance or
15 any other similar instrument. It shall be in an incumbent cable operator's
16 sole discretion to determine, in each area where it provides cable service,
17 whether or not to apply for a certificate of franchise authority or continue
18 to provide service under an existing certificate of franchise authority.

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

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

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

27 50-3005. HOLDER OF CERTIFICATE -- PROVISION OF ACCESS TO VIDEO SERVICE
28 WITHIN CERTAIN PERIOD -- AMENDMENT OF CERTIFICATE OF FRANCHISE AUTHORITY --
29 SUSPENSION OF AUTHORITY FOR NONCOMPLIANCE WITH CERTAIN REQUIREMENTS. (1)
30 Not later than twenty-four (24) months after the date on which the secretary
31 of state issues a certificate of franchise authority pursuant to section
32 50-3003, Idaho Code, the holder of the certificate must provide access to
33 video service to at least one (1) household within the territorial bound-
34 aries of each service area identified in and authorized by the certificate
35 of franchise authority.

36 (2) If a holder of a certificate of franchise authority does not pro-
37 vide access to video service within the territorial boundaries of a service
38 area within twenty-four (24) months from the date the certificate of fran-
39 chise authority authorized the provision of video service within the service
40 area, the holder's certificate of franchise authority shall be deemed to be
41 revoked by operation of law as to such service area without the need for any
42 notice, hearing or action by the secretary of state and such certificate of
43 franchise authority shall not thereafter authorize the provision of video
44 service within such service area by the holder of the certificate.

45 50-3006. VIDEO SERVICE PROVIDER FEE. (1) Every system operator acting
46 pursuant to authorization provided in this chapter shall pay to the politi-
47 cal subdivision in which it provides video service a fee as required in this

1 section. For the purposes of this section, subscribers whose service ad-
2 dress is within the jurisdictional limits of a city shall be deemed city sub-
3 scribers and those subscribers whose service address is outside the juris-
4 dictional limits of a city shall be deemed county subscribers.

5 (2) The obligation to pay such a fee shall commence upon commencement of
6 the provision of video service to subscribers. The video service provider's
7 fee shall be paid to the political subdivision in which it provides video
8 service on a quarterly basis, forty-five (45) days after the close of each
9 calendar quarter, and shall be calculated as a percentage of gross revenues,
10 as defined in subsection (4) of this section. Except as provided in sections
11 50-3007 and 50-3010, Idaho Code, the political subdivision may not require
12 any additional fees or charges from the system operator and may not require
13 the use of any other calculation method.

14 (3) The percentage to be applied against gross revenue pursuant to this
15 section shall be set by the political subdivision in an amount equal to the
16 percentage paid by an incumbent cable service provider or five percent (5%),
17 whichever is less. If there is no incumbent cable service provider having a
18 franchise agreement with the political subdivision, or if a political subdivi-
19 sion has not previously established and assessed such fee to an incumbent
20 cable service provider, the fee to be paid shall be established by ordinance
21 by the political subdivision, but shall in no event be in excess of five per-
22 cent (5%) of the gross revenues, as set forth in subsection (4) of this sec-
23 tion. Nothing herein prohibits a political subdivision from applying a fee
24 percentage that is less than five percent (5%) so long as such fee is applica-
25 ble to all video service providers within the political subdivision, regard-
26 less of whether they provide video service pursuant to a local franchise or a
27 certificate of franchise authority.

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

29 (i) "Gross revenues" means all revenues, calculated in accor-
30 dance with generally accepted accounting principles (GAAP), that
31 are received by the system operator from subscribers for provid-
32 ing video service to video subscribers within the jurisdictional
33 limits of the political subdivision. Gross revenues shall include
34 the following:

35 1. All recurring charges and fees paid by subscribers for
36 the provision of video service, including equipment rental,
37 late fees, insufficient funds fees and fees attributable to
38 video service when sold individually or as part of a package
39 or bundle, or functionally integrated, with services other
40 than video services;

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

43 3. Any other consideration a system operator receives from
44 its subscribers for providing video service when it is re-
45 ceived in a transaction that would evade imposition of a
46 franchise fee if such consideration is not included in rev-
47 enue, except for revenue excluded pursuant to subparagraph
48 (ii) of this paragraph.

49 4. Notwithstanding subparagraph (ii) of this paragraph, the
50 definition of gross revenue provided in a franchise agree-

1 ment between a political subdivision and a video service
2 provider that was in effect on or before July 1, 2011, shall
3 apply to all video provider franchises issued within that
4 political subdivision pursuant to this chapter.

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

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

8 2. Refunds, rebates, credits or discounts to subscribers or
9 a local unit of government to the extent not already offset
10 by subparagraph (i) of this subsection and to the extent the
11 refund, rebate, credit or discount is attributable to the
12 video service;

13 3. Any revenues received by the system operator or its af-
14 filiates from the provision of services or capabilities
15 other than video service, including advertising sales,
16 telecommunications services, information services, home
17 shopping or similar programming advertising, and services,
18 capabilities and applications that may be sold as part of a
19 package or bundle, or functionally integrated, with video
20 service;

21 4. Any revenues received by the provider or its affiliates
22 for the provision of directory or internet advertising, in-
23 cluding yellow pages, white pages, banner advertisement and
24 electronic publishing;

25 5. Any amounts attributable to the provision of video ser-
26 vice to customers at no charge, including the provision of
27 such service to public institutions without charge;

28 6. Amounts billed to video service subscribers to recover
29 taxes, fees, surcharges or assessments imposed on a sys-
30 tem operator or a video customer or otherwise collected
31 by a system operator from video service subscribers for
32 pass-through to any federal, state or local government
33 agency, including the franchise fee and FCC user fee;

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

38 8. Sales of capital assets or surplus equipment;

39 9. Reimbursement by programmers of marketing costs actually
40 incurred by the provider for the introduction of program-
41 ming; or

42 10. The sale of video service for resale to the extent the
43 purchaser certifies in writing that it will resell the ser-
44 vice and pay a video service provider fee with respect to the
45 service.

46 (b) In the case of a video service that is bundled or integrated
47 functionally with other services, capabilities or applications, the
48 portion of the system operator's revenue attributable to the other ser-
49 vices, capabilities or applications shall be included in gross revenues
50 unless the provider can reasonably identify the division or exclusion

1 of the revenue from its books and records that are kept in the regular
2 course of business.

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

7 (5) Payment of the fees as required in this section shall be accompa-
8 nied by a written report identifying the amount of revenues by category of a
9 service and the number of customers receiving each category of service, if
10 any. A political subdivision may, upon reasonable advance written notice,
11 but not more frequently than once in any calendar year, review the business
12 records of a system operator to the extent necessary to ensure proper and ac-
13 curate payment of the video service provider fee. A system operator shall
14 provide sufficient information about such revenues to a political subdivi-
15 sion to allow a proper compliance review by such political subdivision. The
16 system operator shall keep all business records reflecting any gross rev-
17 enues, even if there is a change in ownership, for at least three (3) years
18 after those revenues are recognized by the system operator in its books and
19 records. All records reasonably necessary for the audit shall, at the dis-
20 cretion of the political subdivision, be made available by the system opera-
21 tor at the location within the jurisdiction where the records are kept in the
22 ordinary course of business, or may be provided electronically to the polit-
23 ical subdivision with its consent. The political subdivision and the system
24 operator shall each be responsible for their respective costs of the audit,
25 unless the audit discloses that the system operator has underpaid the video
26 service provider fee by more than seven percent (7%) during the examination
27 period, in which case the system operator shall pay all of the reasonable and
28 actual costs of the audit. Any undisputed amount or refund due to the polit-
29 ical subdivision or the system operator shall be paid within sixty (60) days,
30 plus interest at the statutory rate on civil judgments.

31 (6) Any system operator may identify and collect the amount of the video
32 service provider fee as a separate line item on the regular bill of each sub-
33 scriber.

34 (7) Any city annexing lands shall notify a system operator in writing of
35 any such annexation, including a description of the territory annexed. Be-
36 ginning the first day of the calendar quarter occurring after the system op-
37 erator has received at least forty-five (45) days' notice of annexation of
38 customers into the city's corporate limits, subscribers within such annexed
39 territory shall, for purposes of this section, be considered to be city sub-
40 scribers.

41 50-3007. NONDISCRIMINATION BY GOVERNMENTAL ENTITIES RELATING TO USE
42 OF PUBLIC RIGHTS-OF-WAY. (1) A local unit of government shall allow the
43 holder of a certificate of franchise authority to install, construct and
44 maintain facilities within the public rights-of-way, over which the local
45 unit of government has jurisdiction, to enable the provision of video ser-
46 vices to subscribers to such services. The local unit of government shall
47 provide the holder of such certificate of franchise authority open, com-
48 parable, nondiscriminatory and competitively neutral access to the public
49 rights-of-way within its jurisdiction.

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

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

5 (b) Access to a public building; or

6 (c) The terms or conditions for access to any utility pole within con-
7 trol of the jurisdiction.

8 (3) A local unit of government may impose a permit or license fee on a
9 system operator relating to the opening, closing, inspection or repair of
10 public rights-of-way over which rights-of-way the local unit of government
11 has jurisdiction, but only to the extent it imposes such a fee on incumbent
12 cable service providers or others accessing the public rights-of-way relat-
13 ing to the opening, closing, inspection or repair thereof. Any fee autho-
14 rized in this section may not exceed the actual costs incurred by the local
15 unit of government issuing the permit that are directly related to the sys-
16 tem operator's activity in the rights-of-way with which the permit is asso-
17 ciated. In no event may a fee under this subsection be charged:

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

21 (b) For general revenue purposes.

22 50-3008. DISCRIMINATION AMONG POTENTIAL RESIDENTIAL SUBSCRIBERS PRO-
23 HIBITED -- VIOLATIONS. (1) A system operator shall not deny access to video
24 service to any group of potential residential subscribers because of the in-
25 come of the residents in the local area in which such group resides.

26 (2) For purposes of determining whether a system operator has violated
27 the provisions of this section, cost, density, distance, and technological
28 or commercial limitations shall be taken into account. An alleged violation
29 shall only be considered within the description of the service area set forth
30 in an application or amended application for a certificate of franchise au-
31 thority. The inability to serve an end user because a holder of such certifi-
32 cate is prohibited from placing its own facilities in a building or property
33 shall not be found to be a violation of the provisions of this section. Use of
34 an alternative technology or service arrangement that provides comparable
35 content and functionality shall not be considered a violation of the provi-
36 sions of this section. The requirements of this subsection shall not be con-
37 strued as authorizing any build-out requirements on a system operator.

38 (3) Any potential residential subscriber or group of residential sub-
39 scribers who believes it is being denied access to services in violation of
40 the provisions of this section may file a complaint with the affected local
41 governing authority, along with a clear statement of the facts and the in-
42 formation upon which it is relying to support the complaint. Upon receipt
43 of any such complaint, the affected local governing authority shall serve a
44 copy of the complaint and supporting materials upon the subject system op-
45 erator, which shall have sixty (60) days after receipt of such information
46 to submit a written answer and any other relevant information the provider
47 wishes to submit to the affected local governing authority in response to the
48 complaint. If the affected local governing authority is not satisfied with
49 the response, the affected local governing authority shall compel the system

1 operator to participate in nonbinding mediation. If the mediation does not
2 resolve the matter to the satisfaction of either party, either party may file
3 a complaint with a court of competent jurisdiction. No party shall file an
4 action in court without having participated in a mediation of the complaint.
5 If such court finds that the holder of a certificate of franchise authority
6 is in material noncompliance with this section, the holder shall have a rea-
7 sonable period of time, as specified by the court, to cure such noncompli-
8 ance. The court may also award the affected local governing authority its
9 reasonable costs and attorney's fees in seeking enforcement of the provi-
10 sions of this section.

11 50-3009. CUSTOMER SERVICE STANDARDS. A system operator shall comply
12 with the customer service requirements set forth in 47 CFR 76.309(c), as
13 amended from time to time, and shall maintain a local or toll-free telephone
14 number for customer service contact.

15 50-3010. DESIGNATION AND USE OF CHANNEL CAPACITY FOR PUBLIC, EDUCA-
16 TIONAL OR GOVERNMENTAL USE. (1) On or after the date on which a system op-
17 erator first provides video service to at least one (1) subscriber within the
18 service area of a political subdivision, a system operator shall designate
19 one (1) or more channels for public, educational or governmental (PEG) use,
20 as follows:

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

25 (b) If there is no incumbent cable service provider or no channels for
26 PEG use have been activated within the jurisdictional limits of the po-
27 litical subdivision located within the system operator's service area
28 on the date on which the system operator first provides video service to
29 at least one (1) subscriber therein, the system operator shall, upon re-
30 quest, provide a maximum of two (2), in total, PEG channels for a polit-
31 ical subdivision with a population of at least fifty thousand (50,000),
32 and one (1), in total, PEG channels for a political subdivision with a
33 population of less than fifty thousand (50,000); provided however, that
34 a political subdivision may waive PEG requirements of this section.

35 (c) The number of PEG channels set forth in paragraphs (a) and (b) of
36 this subsection shall constitute the total number of PEG channels that
37 a system operator may be required to designate on any single head-end or
38 hub office, or on all commonly owned video service networks that share
39 a common head-end or hub office, regardless of the number of political
40 subdivisions served from that head-end or hub office. If more than one
41 (1) political subdivision is served by a single or common head-end or
42 hub office, the populations within the jurisdictions of all those po-
43 litical subdivisions shall be aggregated to determine the total number
44 of PEG access channels under paragraphs (a) and (b) of this subsection.

45 (d) Channels for PEG use provided by a system operator may be located by
46 the system operator on any service tier subscribed to by more than fifty
47 percent (50%) of a system operator's subscribers or may be provided as
48 an on-demand service which is available to its subscribers without an

1 additional charge. Channels for PEG use shall be of similar quality and
2 functionality to that offered by commercial channels on such tier of
3 service unless the signal is provided to the system operator at a lower
4 quality or with less functionality.

5 (e) A system operator shall not change a channel location assigned to
6 any PEG access channel without written notice to the affected local
7 unit of government at least sixty (60) days before the date on which the
8 change is to become effective.

9 (f) The PEG agency producing the PEG programming and transmitting it
10 to the system operator shall ensure that all transmissions, content
11 or programming to be transmitted to the system operator are provided
12 or submitted in a manner or form that is capable of being accepted and
13 transmitted by the system operator over its video service network with-
14 out alteration or change in the content or transmission signal and is
15 compatible with the technology or protocol utilized by the system oper-
16 ator to deliver its video service. If the PEG agency cannot produce or
17 maintain PEG programming in that manner or form, the agency shall do so
18 in a manner that conforms to industry standards. If a change in the form
19 of the transmission is required, such change will be done in a manner
20 that is most economical to the system operator.

21 (2) The production and content of any programming aired on any channel
22 provided for PEG use shall be solely the responsibility of the public, edu-
23 cational and governmental agencies receiving the benefit of such capacity.
24 The system operator shall bear the responsibility for the transmission of
25 such content only to the extent that such content complies with the require-
26 ments of subsection (3) of this section.

27 (3) Governmental entities utilizing channels for PEG use shall make the
28 programming of any PEG channel available to all video service providers pro-
29 viding service within such governmental entity's jurisdiction in a nondis-
30 criminatory manner. Each system operator shall be responsible for providing
31 one (1) point of connectivity to the governmental entity's PEG channel dis-
32 tribution point within the jurisdiction to be served. The governmental en-
33 tity providing programming for use on a channel designated for PEG use may
34 request a change of the point of connectivity but shall pay the system opera-
35 tors all costs associated with the change of the point of connectivity.

36 (4) No franchising entity may hereafter require a system operator to
37 provide any institutional network or equivalent capacity on its video ser-
38 vice network.

39 (5) Where technically feasible, a system operator shall use reason-
40 able efforts to interconnect its video network for the purpose of sharing
41 PEG programming with video service providers. Interconnection may be ac-
42 complished by direct cable, microwave link, satellite or other reasonable
43 method of connection. System operators shall negotiate in good faith to
44 provide interconnection of PEG channels. The system operator requesting
45 interconnection shall pay all costs for such interconnection.

46 (6) The operation of any PEG channel provided pursuant to this section
47 and the production of any programming that appears on each such channel shall
48 be the sole responsibility of the governmental entity receiving the benefit
49 of such channel, and the system operator shall bear only the responsibility
50 for the transmission of the programming on each such channel to subscribers

1 and the initial cost of connecting to existing and obligated PEG access chan-
2 nels.

3 (7) A political subdivision may require collection, on a nondiscrimi-
4 natory basis, by all video service providers providing video service within
5 the jurisdictional limits of the political subdivision, of a separate fee to
6 support the political subdivision's capital costs of providing PEG access
7 channels. Any such public, educational or governmental support fee shall
8 be imposed on system operators on a per subscriber basis and shall be lim-
9 ited to no more than one-half of one percent (.5%) of gross revenues as de-
10 fined in section 50-3006(4), Idaho Code. PEG support fees shall be imposed
11 on video service provider's holding a franchise issued by a political sub-
12 division pursuant to section 50-3003(a) or (b), Idaho Code, at the rate and
13 manner as may be set forth in such video service provider's franchise agree-
14 ment with the political subdivision. The PEG support fee shall be collected
15 by the video service provider or system operator and paid to the governmental
16 entity on the same quarterly schedule as the video service provider fee. The
17 video service provider or system operator may designate that portion of the
18 subscriber's bill attributable to the PEG support fee as a separate item on
19 the bill and recover such amount from the subscriber.

20 50-3011. APPLICABILITY OF OTHER LAW. (1) The provisions of this chap-
21 ter are intended to be construed to be consistent with the federal cable com-
22 munications policy act of 1984, 47 U.S.C. sections 521 through 573.

23 (2) Except as otherwise stated herein, nothing in this chapter shall be
24 interpreted to prevent an incumbent cable service provider, a nonincumbent
25 video service provider, a system operator, a local unit of government or a
26 franchising entity from entering into a negotiated franchise agreement with
27 a political subdivision or seeking clarification of its rights and obliga-
28 tions under federal or state law or to exercise any right or authority under
29 federal or state law.

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

37 SECTION 2. SEVERABILITY. The provisions of this act are hereby declared
38 to be severable and if any provision of this act or the application of such
39 provision to any person or circumstance is declared invalid for any reason,
40 such declaration shall not affect the validity of the remaining portions of
41 this act.