

TITLE 50
MUNICIPAL CORPORATIONS

CHAPTER 30
IDAHO VIDEO SERVICE ACT

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

[50-3001, added 2012, ch. 207, sec. 1, p. 552.]

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

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

(2) "Cable service" has the meaning ascribed to it in 47 U.S.C. section 522, as that section existed on January 1, 2012.

(3) "Cable system" has the meaning ascribed to it in 47 U.S.C. section 522, as that section existed on January 1, 2012.

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

(5) "Chapter" means [chapter 30, title 50](#), Idaho Code.

(6) "Franchise" has the meaning ascribed to it in 47 U.S.C. section 522, as that section existed on January 1, 2012. A certificate of franchise authority issued pursuant to section [50-3003](#), Idaho Code, shall constitute a franchise for the purposes of 47 U.S.C. section 522.

(7) "Franchising entity" means the state of Idaho or a city or county within the state of Idaho authorized by state or federal law to grant a franchise.

(8) "Governing body" means the city council or the board of county commissioners of a political subdivision.

(9) "Incumbent cable service provider" means a person who provides cable service and holds a franchise issued by a franchising entity prior to July 1, 2012.

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

(11) "Nonincumbent video service provider" means:

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

(b) A person authorized under the provisions of this chapter to provide video service in a geographical area in which, on July 1, 2012, there was no incumbent cable service provider providing cable service.

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

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

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

(15) "Service tier" means a category of video service provided by a video service provider to a subscriber and for which a separate rate is charged by the video service provider.

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

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

(18) "Video service" means the delivery of video programming to subscribers, which programming is generally considered comparable to video programming delivered to viewers by a television broadcast station, cable service or digital television service, without regard to the technology used to deliver the video service, and which service is provided primarily through equipment or facilities located in whole or in part in, on, under or over any public rights-of-way. The term includes cable service, but excludes any video programming provided to persons in their capacity as subscribers to commercial mobile service as defined in 47 U.S.C. section 332(d), or video programming provided as part of and via a service that enables end users to access content, information, electronic mail or other services offered over the public internet.

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

(20) "Video service provider fee" means the amount paid by a system operator to a political subdivision pursuant to section [50-3007](#), Idaho Code.

[50-3002, added 2012, ch. 207, sec. 1, p. 552.]

50-3003. FRANCHISING AUTHORITY -- APPLICATION FOR CERTIFICATE OF FRANCHISE AUTHORITY -- MODIFICATION OF SERVICE AREAS -- TERM OF CERTIFICATE OF FRANCHISE AUTHORITY AND TERMINATION THEREOF. (1) On and after July 1, 2012, no person shall act as a video service provider or operate a video service network within the state of Idaho unless such person:

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

(b) Is a nonincumbent cable service provider who:

(i) Elects to negotiate a franchise agreement in accordance with title VI of the communications act of 1934, as amended, 47 U.S.C. section 521 et seq., with a political subdivision, which agreement establishes the terms and conditions applicable to that person to provide cable or video service within the jurisdictional boundaries of such political subdivision and has been issued a franchise from the political subdivision for such purpose; or

(ii) Elects to adopt the terms and conditions of an existing franchise issued by a political subdivision to an incumbent cable service provider providing video service within the same service area and who has been issued a franchise from the political subdivision authorizing the video service provider to provide video services within the political subdivision pursuant to the same terms and conditions as the franchise issued to the incumbent cable service provider in the political subdivision; or

(c) Has been granted a certificate of franchise authority to do business in the state of Idaho as a system operator by the Idaho secretary of state, as authorized in this chapter.

(2) (a) Nothing in this chapter shall be construed to prohibit a person from holding a franchise issued by a political subdivision and holding a certificate of franchise authority issued by the Idaho secretary of state for a different service area. Provided however, a video service provider shall not hold a franchise issued by a political subdivision and a certificate of franchise authority issued by the secretary of state for the same service area, except as permitted pursuant to paragraph (b) of this subsection.

(b) An incumbent cable service provider may submit an application for a certificate of franchise authority for a service area in which the incumbent cable service provider has an existing franchise from a political subdivision for such service area and, upon the granting of a certificate of franchise authority to the incumbent cable service provider, the incumbent cable service provider's franchise from the political subdivision shall no longer be of any force or effect.

(c) It shall be in an incumbent cable operator's sole discretion to determine, in each service area wherein it provides cable service, whether or not to apply for a certificate of franchise authority or continue to provide service under an existing franchise issued by a political subdivision.

(3) Any person seeking a certificate of franchise authority shall submit an application to the Idaho secretary of state that is in accordance with the requirements of this chapter and sets forth the following information:

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

(b) A specific identification of the political subdivision(s) constituting the service area wherein the applicant intends to provide video service;

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

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

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

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

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

(4) The application shall be accompanied by a filing fee as set forth in section [50-3005](#), Idaho Code. Within thirty (30) days after filing of the application, or within thirty (30) days after the filing of supplemental information necessary to make the application complete, the secretary of state shall determine the completeness of an application or, if applicable, shall notify the applicant of a determination that the application or the application as supplemented by additional information is incomplete, state the basis for that determination, and inform the applicant that the applicant may resubmit a correct application. The secretary of state shall issue a certificate of franchise authority within fifteen (15) days after the secretary of state's determination that the filed application is complete and in compliance with the requirements of this chapter. Upon issuance of a certificate of franchise authority, the secretary of state shall, within fifteen (15) days from the date of such issuance, provide written notice of such issuance, provide written notice of such issuance to the governing body of each political subdivision and of each local unit of government located within the service area designated in the application for a certificate of franchise authority.

(5) A holder of a certificate of franchise authority may modify the boundaries of an existing service area authorized under the certificate by filing written notice of the modification with the secretary of state accompanied by the fee required by section [50-3005](#), Idaho Code. The holder of the certificate may make the modification on the date on which it files the written notice with the secretary of state.

(6) A certificate of franchise authority may be transferred to any successor of the system operator to which the certificate of franchise authority was initially issued upon the successor filing an application containing the same information as required in subsection (3) of this section. A successor may only undertake operation and maintenance of video facilities pursuant to an approved certificate of franchise authority upon providing notice to the local unit of government with jurisdiction concerning the public rights-of-way to be used. A successor shall be responsible to conform to approved plans and permits to coordinate installation and maintenance as required by the local unit of government.

(7) A certificate of franchise authority may be terminated by the system operator submitting a written notice to the secretary of state and any affected local unit of government. No approval of the termination of the certificate of franchise authority shall be required by the secretary of state or by any affected local unit of government. Termination of a

certificate of franchise authority shall not relieve a system operator of any obligation to mitigate the effects of abandoned physical facilities remaining in any public rights-of-way.

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

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

(10) The duties of the secretary of state pursuant to this chapter are ministerial.

[50-3003, added 2012, ch. 207, sec. 1, p. 553.]

50-3004. PROVISION OF ACCESS TO VIDEO SERVICE WITHIN A CERTAIN PERIOD -- SUSPENSION OF AUTHORITY FOR NONCOMPLIANCE WITH CERTAIN REQUIREMENTS. (1) Not later than twenty-four (24) months after the date on which the secretary of state issues a certificate of franchise authority pursuant to section [50-3003](#), Idaho Code, the holder of the certificate must provide access to video service within the territorial boundaries of each service area identified in and authorized by the certificate of franchise authority.

(2) If a holder of a certificate of franchise authority does not provide access to video service to at least one (1) household within the territorial boundaries of a service area within twenty-four (24) months from the date the certificate of franchise authority authorized the provision of video service within the service area, the holder's certificate of franchise authority shall be deemed to be revoked by operation of law as to such service area without the need for any notice, hearing or action by the secretary of state and such certificate of franchise authority shall not thereafter authorize the provision of video service within such service area by the holder of the certificate.

[50-3004, added 2012, ch. 207, sec. 1, p. 556.]

50-3005. FEES. (1) In carrying out the provisions of this chapter, the secretary of state shall charge and collect the fees set forth in this section.

(2) The filing fee for accepting an application for a certificate of franchise authority shall be one thousand dollars (\$1,000), which fee shall include issuance of a certificate of franchise authority by the secretary of state.

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

[50-3005, added 2012, ch. 207, sec. 1, p. 556.]

50-3006. USE OF PUBLIC RIGHTS-OF-WAY BY A HOLDER OF A CERTIFICATE OF FRANCHISE AUTHORITY. (1) A local unit of government shall allow the holder of a certificate of franchise authority to install, construct and maintain facilities within the public rights-of-way, over which the local unit of government has jurisdiction, to enable the provision of video services to sub-

scribers to such services. No provision of this chapter shall diminish or otherwise limit the authority of this state, highway district or other local unit of government having jurisdiction over the public rights-of-way. Nothing in this chapter shall be construed to limit, abrogate or supersede the provisions of any applicable local ordinance or other regulation governing the use of the public rights-of-way.

(2) If no local code, ordinance, resolution or other regulation by the local unit of government regulates the installation of physical facilities within public rights-of-way, the following requirements shall be deemed the minimum standards for such activities:

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

(b) A certificate of franchise authority granted pursuant to this chapter carries with it an obligation to respect orderly management and maintenance of public rights-of-way by the system operator. A system operator authorized hereby to use public rights-of-way shall employ sound construction practices to maintain the integrity of public improvements and preexisting rights-of-way conditions and shall be responsible for repair or replacement of any improvements or maintenance or restoration of any conditions disrupted by construction activities. The system operator shall cause any such repair or replacement to be made promptly and in a manner that complies with adopted standards or as is otherwise appropriate to restore the rights-of-way to conditions existing before installation.

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

(3) A local unit of government shall provide the holder of a certificate of franchise authority with open, comparable, nondiscriminatory and competitively neutral access to the public rights-of-way within its jurisdiction.

(4) A local unit of government may not impose requirements that discriminate against a system operator in any manner, including:

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

(b) Access to a public building; or

(c) The terms or conditions for access to any utility pole within the control of the local unit of government.

(d) Provided however, the provisions of this subsection shall not be construed to supersede an agreement, or portion of an agreement, related to the joint use of utility infrastructure within the control of the local unit of government, between the local unit of government and a video service.

(5) A local unit of government may impose a permit or license fee on a system operator relating to the opening, closing, inspection or repair of public rights-of-way over which rights-of-way the local unit of government has jurisdiction, but only to the extent it imposes such a fee on other video

service providers. A fee authorized in this section shall not exceed the actual costs incurred by the local unit of government that are directly related to the system operator's activity in the rights-of-way with which the permit is associated. In no event may a fee under this subsection be charged:

- (a) If the system operator, or its affiliate, already has paid a permit fee in connection with the same activity in the public rights-of-way that would otherwise be covered by the permit fee under this section; or
- (b) For general revenue purposes.

[50-3006, added 2012, ch. 207, sec. 1, p. 556.]

50-3007. VIDEO SERVICE PROVIDER FEE. (1) A system operator providing video service within a political subdivision pursuant to a certificate of franchise authority shall pay to the political subdivision in which it provides video service a video service provider fee as may be required by the political subdivision pursuant to this section. For the purposes of this section, subscribers whose service address is within the jurisdictional limits of a city shall be deemed city subscribers and those subscribers whose service address is outside the jurisdictional limits of a city shall be deemed county subscribers.

(2) The obligation to pay such a fee shall commence upon commencement of the provision of video service to subscribers. The video service provider's fee shall be paid to the political subdivision in which it provides video service on a quarterly basis, forty-five (45) days after the close of each calendar quarter, and shall be calculated as a percentage of gross revenues, as defined in subsection (4) of this section. Except as provided in section [50-3006](#), Idaho Code, the political subdivision may not require any additional fees or charges from the system operator and may not require the use of any other calculation method.

(3) The fee authorized by this section shall be a percentage of gross revenue, as defined in this section, and shall be determined by the political subdivision. If there is an incumbent cable service provider providing cable service in the political subdivision, the system operator shall pay an amount equal to the percentage of gross revenue paid by an incumbent cable service provider or five percent (5%), whichever is less. If there is no incumbent cable service provider having a franchise agreement with the political subdivision, or if a political subdivision has not previously established and assessed such fee to an incumbent cable service provider, the fee shall be established by the political subdivision, in an amount not in excess of five percent (5%) of the gross revenue, which fee shall be applicable to all video service providers within the political subdivision, regardless of whether they provide video service pursuant to a local franchise or a certificate of franchise authority.

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

(i) "Gross revenues" means all revenues, calculated in accordance with generally accepted accounting principles (GAAP), that are received by the system operator from subscribers for the provision of video service to subscribers within the jurisdictional limits of the political subdivision. Gross revenues shall include the following:

1. All recurring charges and fees paid by subscribers for the provision of video service; equipment rental charges, late fees and insufficient funds fees; and fees attributable to video service when sold individually or as part of a

package or bundle, or functionally integrated with services other than video services. The term "gross revenues" shall not include any charges resulting from action by a federal agency or taxes or surcharges imposed by a governmental body which are separately itemized and billed by a video service provider to its subscribers;

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

3. Any other consideration a system operator receives from its subscribers for providing video service when it is received in a transaction that would evade imposition of a franchise fee if such consideration is not included in revenue.

(ii) Notwithstanding any provision of this chapter, if a franchise agreement between a political subdivision and an incumbent cable service provider in effect on July 1, 2012, defines the term "gross revenues," which definition includes revenues in addition to the revenues set forth in the definition of gross revenues in subsection (4) (a) of this section, the video service provider fee paid by any system operator providing service within a political subdivision pursuant to a certificate of franchise authority issued on or after July 1, 2012, pursuant to this chapter, shall be calculated based upon the definition of gross revenues set forth in the franchise agreement between a political subdivision and an incumbent cable provider in effect on July 1, 2012.

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

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

(5) Payment of the fees as required in this section shall be accompanied by a written report identifying the amount of revenues received from subscribers for the provision of video services to the subscribers and identifying exclusions from gross revenues, if any. A political subdivision may, upon reasonable advance written notice, but not more frequently than once in any calendar year, review the business records of a system operator to the extent necessary to ensure proper and accurate payment of the video service provider fee. A system operator shall provide sufficient information about such revenues to a political subdivision to allow a proper compliance review by such political subdivision. The system operator shall keep all business records reflecting any gross revenues, even if there is a change in ownership, for at least three (3) years after those revenues are recognized by the system operator in its books and records. All records reasonably necessary for the audit shall, at the discretion of the political subdivision, be made available by the system operator at the location within the jurisdiction where the records are kept in the ordinary course of business, or may be

provided electronically to the political subdivision with its consent. The political subdivision and the system operator shall each be responsible for their respective costs of the audit, unless the audit discloses that the system operator has underpaid the video service provider fee by more than seven percent (7%) during the examination period, in which case the system operator shall pay all of the reasonable and actual costs of the audit. Any undisputed amount or refund due to the political subdivision or the system operator shall be paid within sixty (60) days, plus interest at the statutory rate on civil judgments.

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

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

[50-3007, added 2012, ch. 207, sec. 1, p. 557.]

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

(2) For purposes of determining whether a system operator has violated the provisions of this section, cost, density, distance and technological or commercial limitations shall be taken into account. An alleged violation shall only be considered within the description of the service area set forth in a certificate of franchise authority. The inability to serve an end user because a holder of such certificate is prohibited from placing its own facilities in a building or property shall not be found to be a violation of the provisions of this section. The requirements of this subsection shall not be construed as authorizing any build-out requirements on a system operator.

(3) Any potential residential subscriber or group of residential subscribers who believes it is being denied access to services in violation of the provisions of this section may file a complaint with the governing authority of the political subdivision within the service area of the system operator in which the subscribers or potential subscribers reside. The complaint shall provide a clear statement of the facts and information upon which it bases the complaint. Upon receipt of any such complaint, the governing authority shall serve a copy of the complaint and supporting materials upon the subject system operator, and shall require the system operator to submit a written answer and other relevant information in response to the complaint within thirty (30) days from service of the complaint on the system operator. If the governing authority, after examination of the complaint and answer thereto, is not successful in informally resolving the dispute, the governing authority may require the system operator and the complainants to enter into mediation. Alternatively, either party may seek judicial determination of the issues. If a court finds that the holder of a certificate of franchise authority is denying access to video service to any group of potential residential subscribers because of the income level of the residents in the local area in which such group resides, the holder of

a certificate of franchise authority shall provide access to video service to the affected group of potential subscribers within a reasonable period of time, as specified by the court, to cure such noncompliance.

[50-3008, added 2012, ch. 207, sec. 1, p. 559.]

50-3009. CUSTOMER SERVICE STANDARDS. A system operator shall comply with the customer service requirements as set forth in 47 CFR 76.309(c), as amended from time to time, and shall maintain a local or toll-free telephone number for customer service contact. A political subdivision may provide such assistance to subscribers as the political subdivision may deem appropriate to enforce the provisions of this section.

[50-3009, added 2012, ch. 207, sec. 1, p. 560.]

50-3010. DESIGNATION AND USE OF CHANNEL CAPACITY FOR PUBLIC, EDUCATIONAL OR GOVERNMENTAL USE. (1) On, or within a reasonable period of time after, the date on which a system operator first provides video service to a subscriber within the service area of a political subdivision, a system operator shall designate a sufficient amount of capacity on its video service network to allow the provision of public, educational and governmental access channels or their functional equivalents, hereinafter referred to in this section as PEG channels, for noncommercial programming, as follows:

(a) Designate a sufficient amount of capacity on its network to allow the provision of PEG channels equal in number to those that have been activated by an incumbent cable service provider on the date on which the system operator first provides video service to a subscriber within such political subdivision.

(b) If there is no incumbent cable service provider or no PEG channels have been activated within the jurisdictional limits of the political subdivision located within the system operator's service area on the date on which the system operator first provides video service to a subscriber within such service area, the system operator shall, upon request, provide a maximum of two (2), in total, PEG channels for a political subdivision with a population of at least fifty thousand (50,000), and one (1), in total, PEG channel for a political subdivision with a population of less than fifty thousand (50,000). Provided however, a request by a political subdivision for the provision of PEG channels by a system operator, or a waiver of the requirement to provide PEG channels, shall be uniformly applied to all system operators providing video service within the political subdivision.

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

(d) PEG channels provided by a system operator may be located by the system operator on any service tier subscribed to by more than fifty percent (50%) of a system operator's subscribers. PEG channels shall

be of similar quality and functionality to that offered by commercial channels on such tier of service unless the signal is provided to the system operator at a lower quality or with less functionality.

(e) A system operator shall not change a channel location assigned to any PEG channel without written notice to the affected political subdivision at least sixty (60) days before the date on which the change is to become effective.

(f) The PEG agency producing the PEG programming and transmitting it to the system operator shall ensure that all transmissions, content or programming to be transmitted to the system operator are provided or submitted in a manner or form that is capable of being accepted and transmitted by the system operator over its video service network without alteration or change in the content or transmission signal and is compatible with the technology or protocol utilized by the system operator to deliver its video service. If the PEG agency cannot produce or maintain PEG programming in that manner or form, the agency shall do so in a manner that conforms to the then existing industry standards. If a change by the PEG agency in the manner or form of the content or programming is required, and such change conforms to the then existing industry standards, the system operator shall accept such programming for transmission over its video service network in the manner that is most economical to the system operator.

(2) The production and content of any programming aired on any channel provided for PEG use shall be solely the responsibility of the public, educational and governmental agencies receiving the benefit of such capacity. The system operator shall bear the responsibility for the transmission of such content only to the extent that such content complies with the requirements of subsection (1) (f) of this section.

(3) Governmental entities utilizing channels for PEG use shall make the programming available to all video service providers providing service within such governmental entity's jurisdiction in a nondiscriminatory manner. Each system operator shall be responsible for providing one (1) point of connectivity to the governmental entity's PEG channel distribution point within the jurisdiction to be served. The governmental entity providing programming for use on a channel designated for PEG use may request a change of the point of connectivity but shall pay the system operator for all costs associated with the change of the point of connectivity.

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

(5) Where technically feasible, a system operator shall use reasonable efforts to interconnect its video network for the purposes of sharing PEG programming with other video service providers. Interconnection may be accomplished by direct cable, microwave link, satellite or other reasonable method of connection. System operators shall negotiate in good faith to provide interconnection of PEG channels. The video service provider requesting interconnection shall pay all costs for such interconnection.

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

and the initial cost of connecting to existing and obligated PEG access channels.

[50-3010, added 2012, ch. 207, sec. 1, p. 560.]

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

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

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

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

[50-3011, added 2012, ch. 207, sec. 1, p. 562.]