

MAR 6 2006
WAYS AND MEANS

HOUSE FILE 2647
BY COMMITTEE ON COMMERCE,
REGULATION AND LABOR

(SUCCESSOR TO HSB 670)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to franchises for the provision of cable service
2 or video service including providing for fees and providing an
3 effective date.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2647

1 Section 1. NEW SECTION. 477A.1 DEFINITIONS.

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. "Cable operator" means the same as defined in 47 U.S.C.
5 § 522.

6 2. "Cable service" means the same as defined in 47 U.S.C.
7 § 522.

8 3. "Cable system" means the same as defined in 47 U.S.C. §
9 522.

10 4. "Competitive cable service provider" means a person who
11 provides cable service over a cable system in an area other
12 than the incumbent cable operator providing service in the
13 same area.

14 5. "Competitive video service provider" means a person who
15 provides video service other than a cable operator.

16 6. "Franchise" means an initial authorization, or renewal
17 of an authorization, issued by the secretary of state or a
18 municipality, regardless of whether the authorization is
19 designated as a franchise, permit, license, resolution,
20 contract, certificate, agreement, or otherwise, that
21 authorizes the construction and operation of a cable system or
22 video service provider's network in a public right-of-way.

23 7. a. "Gross revenues" means all consideration of any
24 kind or nature, including but not limited to cash, credits,
25 property, and in-kind contributions received from subscribers
26 for the provision of cable service over a cable system by a
27 competitive cable provider or for the provision of video
28 service by a competitive video service provider within the
29 municipality's jurisdiction.

30 b. "Gross revenues" does not include any of the following:

31 (1) Revenues not actually received, even if billed,
32 including bad debt.

33 (2) Revenues received by any affiliate or any other person
34 in exchange for supplying goods or services used by the person
35 providing cable service or video service.

1 (3) Refunds, rebates, or discounts made to subscribers,
2 leased access providers, advertisers, or any municipality or
3 other unit of local government.

4 (4) Revenues from services not classified as cable service
5 or video service, including, without limitation, revenue
6 received from telecommunications services, revenue received
7 from information services, revenue received in connection with
8 advertising, revenue received in connection with home-shopping
9 services, or any other revenues attributed by the competitive
10 cable service provider or competitive video service provider
11 to noncable service or nonvideo service in accordance with any
12 applicable laws, rules, regulations, standards, or orders.

13 (5) Revenues paid by subscribers to home shopping
14 programmers directly from the sale of merchandise through any
15 home-shopping channel offered as part of the cable services or
16 video services.

17 (6) Revenues from the sale of cable services or video
18 services for resale in which the purchaser is required to
19 collect the five percent fee from the purchaser's customer.

20 (7) Revenues from any tax of general applicability imposed
21 upon the competitive cable service provider or competitive
22 video service provider or upon subscribers by a city, state,
23 federal, or any other governmental entity and required to be
24 collected by the competitive cable service provider or
25 competitive video service provider and remitted to the taxing
26 entity, including but not limited to sales or use tax, gross
27 receipts tax, excise tax, utility users tax, public service
28 tax, and communication taxes, and including the franchise fee
29 imposed under section 477A.8.

30 (8) Revenues forgone from the provision of cable services
31 or video services to public institutions, public schools, or
32 governmental entities at no charge.

33 (9) Revenues foregone from the competitive cable service
34 provider's or competitive video service provider's provision
35 of free or reduced-cost video service to any person,

1 including, without limitation, any municipality and other
2 public institutions or other institutions.

3 (10) Revenues from sales of capital assets or sales of
4 surplus equipment.

5 (11) Revenues from reimbursements by programmers of
6 marketing costs incurred by the competitive cable service
7 provider or competitive video service provider for the
8 introduction or promotion of new programming.

9 (12) Directory or internet advertising revenues including
10 but not limited to yellow page, white page, banner
11 advertisement, and electronic publishing.

12 (13) Copyright fees paid to the United States copyright
13 office.

14 8. "Incumbent cable provider" means the cable operator
15 serving the largest number of cable subscribers in a
16 particular franchise service area on July 1, 2006.

17 9. "Municipality" means a county or city.

18 10. "Percentage of gross revenues" means the percentage
19 set by the municipality and identified in a written request
20 made under section 477A.8, subsection 1, which shall be not
21 greater than the most recent percentage paid by the incumbent
22 cable provider as a franchise fee or five percent, whichever
23 is less.

24 11. "Public right-of-way" means the area on, below, or
25 above a public roadway, highway, street, bridge, cart way,
26 bicycle lane, or public sidewalk in which the municipality has
27 an interest, including other dedicated rights-of-way for
28 travel purposes and utility easements. "Public right-of-way"
29 does not include the airwaves above a public right-of-way with
30 regard to cellular or other nonwire telecommunications or
31 broadcast services or utility poles owned by a municipality or
32 a municipal utility.

33 12. "Video programming" means the same as defined in 47
34 U.S.C. § 522.

35 13. "Video service" means video programming services

1 provided through wireline facilities located at least in part
2 in the public right-of-way without regard to delivery
3 technology, including internet protocol technology. "Video
4 service" does not include any video programming provided by a
5 provider of commercial mobile service as defined in 47 U.S.C.
6 § 332, or cable service provided by an incumbent cable
7 provider or a competitive cable service provider.

8 Sec. 2. NEW SECTION. 477A.2 CERTIFICATE OF FRANCHISE
9 AUTHORITY REQUIREMENT.

10 1. Except as otherwise provided in this chapter, a person
11 providing cable service or video service in this state on or
12 after July 1, 2006, shall not provide such service without
13 obtaining a certificate of franchise authority issued by the
14 secretary of state.

15 2. A local exchange utility providing local telephone
16 service in this state and certified pursuant to section 476.29
17 that seeks to operate or operates as a competitive cable
18 service provider or competitive video service provider, or any
19 affiliate of such local exchange utility that seeks to operate
20 or operates as a competitive cable service provider or
21 competitive video service provider, shall be deemed to hold a
22 certificate of franchise authority issued by the secretary of
23 state upon the effective date of this Act. A local exchange
24 utility or an affiliate of a local exchange utility shall not
25 be required to apply for a certificate of franchise authority
26 pursuant to section 477A.3 except as required by rule.

27 3. a. A person providing cable service or video service
28 under a franchise agreement with a municipality prior to July
29 1, 2006, is not subject to this section with respect to such
30 municipality until the franchise agreement expires or is
31 terminated pursuant to paragraph "b".

32 b. A person providing cable service or video service that
33 is not the incumbent cable service provider and serves fewer
34 than forty percent of the total cable customers in a specific
35 municipality's franchise area may elect to terminate a

1 franchise agreement with the municipality and seek a
2 certificate of franchise authority from the secretary of state
3 by providing written notice to the secretary of state and the
4 affected municipality before January 1, 2007. The franchise
5 agreement with the municipality is terminated on the date the
6 secretary of state issues the certificate of franchise
7 authority to the person terminating the agreement. A person
8 providing cable service or video service who elects to
9 terminate a franchise agreement with a municipality under this
10 paragraph shall remit to the municipality within ninety days
11 after the date of termination any accrued but unpaid franchise
12 fees due under the terminated franchise agreement. If credit
13 remains from prepaid franchise fees under the franchise
14 agreement, the person providing cable service or video service
15 may deduct the amount of the remaining credit from any future
16 fees or taxes the person is required to pay to the
17 municipality under the franchise agreement.

18 4. For purposes of this section, a person providing cable
19 service or video service is deemed to have executed a
20 franchise agreement to provide cable service or video service
21 with a specific municipality if an affiliate or successor of
22 the person providing cable service or video service has
23 executed a franchise agreement with that municipality.

24 5. A competitive cable service provider or competitive
25 video service provider shall provide notice to each
26 municipality with authority to grant a franchise in the
27 service area in which the competitive cable service provider
28 or competitive video service provider is granted authority to
29 provide service under a certificate of franchise authority
30 that the competitive cable service provider or competitive
31 video service provider offers or intends to offer cable
32 services or video services within the jurisdiction of the
33 municipality.

34 6. As used in this section, "affiliate" or "successor"
35 includes but is not limited to a person that directly, or

1 indirectly through one or more intermediaries, controls, is
2 controlled by, or is under common control with a person
3 receiving, obtaining, or operating under a franchise agreement
4 with a municipality to provide cable service or video service
5 through merger, sale, assignment, restructuring, or any other
6 type of transaction.

7 Sec. 3. NEW SECTION. 477A.3 APPLICATION REQUIREMENTS --
8 CERTIFICATE OF FRANCHISE AUTHORITY.

9 1. The secretary of state shall issue a certificate of
10 franchise authority under this chapter after receipt of a
11 completed application and affidavit submitted by the applicant
12 and signed by an officer or general partner of the applicant.
13 The application and affidavit shall provide all of the
14 following information:

15 a. That the applicant has filed or will timely file with
16 the federal communications commission all forms required by
17 the commission in advance of offering cable service or video
18 service in this state.

19 b. That the applicant agrees to comply with all applicable
20 federal and state statutes, regulations, and rules.

21 c. That the applicant agrees to comply with all applicable
22 municipal ordinances and regulations regarding the use and
23 occupation of a public right-of-way in the delivery of the
24 cable service or video service, including the police powers of
25 the municipalities in which the service is delivered.

26 d. A description of the service area to be served and the
27 municipalities to be served by the applicant which may include
28 certain designations of unincorporated areas. This
29 description shall be updated by the applicant prior to the
30 expansion of cable service or video service to a previously
31 undesignated service area and, upon such expansion, notice
32 shall be given to the federal communications commission of the
33 service area to be served by the applicant.

34 e. The address of the applicant's principal place of
35 business and the names of the applicant's principal executive

1 officers.

2 2. The certificate of franchise authority issued by the
3 secretary of state shall contain all of the following:

4 a. A grant of authority to provide cable service or video
5 service in a specific service area and a description of the
6 service area.

7 b. A grant of authority to use and occupy the public
8 right-of-way in the delivery of cable service or video
9 service, subject to the laws of this state, including the
10 police powers of the municipalities in which the service is
11 delivered.

12 c. A statement that the grant of authority provided by the
13 certificate is subject to the lawful operation of the cable
14 service or video service by the applicant or the applicant's
15 successor.

16 3. A certificate of franchise authority issued by the
17 secretary of state is fully transferable to any successor of
18 the applicant to which the certificate was initially issued.
19 A notice of transfer shall be filed by the holder of the
20 certificate of franchise authority with the secretary of state
21 and the affected municipality within fourteen business days of
22 the completion of the transfer of the certificate of franchise
23 authority.

24 4. The certificate of franchise authority issued by the
25 secretary of state may be terminated by a person providing
26 cable service or video service by submitting written notice to
27 the secretary of state.

28 Sec. 4. NEW SECTION. 477A.4 APPLICABILITY TO FEDERAL
29 LAW.

30 To the extent required by applicable law, a certificate of
31 franchise authority issued under this chapter shall constitute
32 a "franchise" for the purposes of 47 U.S.C. § 541(b)(1). To
33 the extent required for the purposes of 47 U.S.C. § 521-561,
34 only the state of Iowa shall constitute the exclusive
35 franchising authority for competitive cable service providers

1 and competitive video service providers in this state.

2 Sec. 5. NEW SECTION. 477A.5 APPLICABILITY TO EXISTING
3 PROVIDERS.

4 Except as otherwise provided in this chapter, this chapter
5 is not intended to abrogate, nullify, or adversely affect in
6 any way the contractual rights, duties, and obligations
7 existing and incurred by a person providing cable service or
8 video service before the effective date of this Act, and owed
9 or owing to any private person, firm, partnership,
10 corporation, or other entity including, without limitation,
11 those obligations measured by and related to the gross revenue
12 to be received by the holder of a certificate of franchise
13 authority for services provided in the service area to which
14 such prior franchise or permit applies.

15 All liens, security interests, royalties, and other
16 contracts, rights, and interests in effect on the effective
17 date of this Act, shall continue in full force and effect,
18 without the necessity for renewal, extension, or continuance,
19 and shall be paid and performed by the holder of a certificate
20 of franchise authority, and shall apply as though the revenues
21 generated by the holder of a certificate of franchise
22 authority continued to be generated pursuant to the permit or
23 franchise issued by the prior local franchising authority or
24 municipality within the service area to which the prior permit
25 or franchise applies.

26 It shall be a condition to the issuance and continuance of
27 a certificate of franchise authority that the private
28 contractual rights and obligations herein described continue
29 to be honored, paid, or performed to the same extent as though
30 the cable service provider continued to operate under its
31 prior franchise agreement, for the duration of the certificate
32 of franchise authority and any renewals or extensions of the
33 prior franchise agreement, and that the applicant so agrees.

34 Any person holding or claiming rights herein reserved may
35 enforce the rights by an action brought in a court of

1 competent jurisdiction.

2 Sec. 6. NEW SECTION. 477A.6 MUNICIPALITY RESTRICTIONS.

3 1. A municipality shall not require a holder of a
4 certificate of franchise authority to do any of the following:

5 a. Comply with a mandatory build-out provision.

6 b. Obtain a separate franchise.

7 c. Pay any additional fees, except as provided in this
8 chapter.

9 d. Be subject to any additional franchise requirement by
10 the municipality, except as provided in this chapter.

11 2. For purposes of this section, a "franchise requirement"
12 includes any provision regulating rates or requiring build-out
13 requirements to deploy any facilities or equipment.

14 3. Section 364.2 and section 364.3, subsection 7, shall
15 not apply to a holder of a certificate of franchise authority
16 issued pursuant to this chapter.

17 Sec. 7. NEW SECTION. 477A.7 PUBLIC, EDUCATIONAL, AND
18 GOVERNMENT ACCESS CHANNELS.

19 1. Not later than one hundred eighty days after a request
20 by a municipality in which a competitive cable service
21 provider or a competitive video service provider is providing
22 cable service or video service, the holder of the certificate
23 of authority for that municipality shall designate a
24 sufficient amount of capacity on the certificate holder's
25 communications network to allow the provision of a comparable
26 number of channels or capacity for the municipality to provide
27 public, educational, and governmental noncommercial
28 programming by the competitive cable service provider or
29 competitive video service provider.

30 a. The public, educational, and governmental content to be
31 provided pursuant to this section shall be the responsibility
32 of the municipality receiving the benefit of such capacity.
33 The holder of a certificate of franchise authority shall be
34 responsible only for the transmission of such content, subject
35 to technological restraints.

1 b. The municipality receiving additional capacity under
2 this section shall ensure that all transmissions, content, or
3 programming to be transmitted by the holder of the certificate
4 of franchise authority are provided or submitted to the
5 competitive cable service provider or competitive video
6 service provider in a manner or form that is capable of being
7 accepted and transmitted by the competitive cable service or
8 competitive video service provider, without requirement for
9 additional alteration or change in the content, over the
10 particular network of the competitive cable service provider
11 or competitive video service provider, which is compatible
12 with the technology or protocol utilized by the competitive
13 cable service provider or competitive video service provider
14 to deliver services.

15 2. Where technically feasible, a competitive cable service
16 provider or competitive video service provider that is a
17 holder of a certificate of franchise authority and an
18 incumbent cable service provider shall use reasonable efforts
19 to interconnect the cable or video communications network
20 systems of the certificate holder and incumbent cable service
21 provider for the purpose of providing public, educational, and
22 government programming. Interconnection may be accomplished
23 by direct cable, microwave link, satellite, or other
24 reasonable method of connection. A holder of a certificate of
25 franchise authority and an incumbent cable service provider
26 shall negotiate in good faith and an incumbent cable service
27 provider shall not withhold interconnection of public,
28 educational, or government channels.

29 3. A court of competent jurisdiction shall have exclusive
30 jurisdiction to enforce any requirement under this section.

31 Sec. 8. NEW SECTION. 477A.8 FEES.

32 1. a. In any service area in which a competitive cable
33 service provider or a competitive video service provider
34 holding a certificate of franchise authority offers or
35 provides cable service or video service, the competitive cable

1 service provider or competitive video service provider shall
2 calculate and pay a franchise fee to the municipality with
3 authority to grant a certificate of franchise authority in
4 that service area upon the municipality's written request. If
5 the municipality makes such a request, the franchise fee shall
6 be due on a quarterly basis, not later than forty-five days
7 after the close of the quarter, and shall be calculated as a
8 percentage of gross revenues. The municipality shall not
9 demand any additional franchise fees from the competitive
10 cable service provider or competitive video service provider,
11 and shall not demand the use of any other calculation method
12 for the franchise fee.

13 b. A provider who is both a competitive cable service
14 provider and a competitive video service provider shall be
15 subject to and only be required to pay one franchise fee to a
16 municipality under this subsection regardless of whether the
17 provider provides both cable service and video service.

18 c. At the request of a municipality and not more than once
19 per year, the auditor of state may perform reasonable audits
20 of the competitive cable service provider's or competitive
21 video service provider's calculation of the franchise fee
22 under this subsection. The municipality shall bear the costs
23 of any audit requested pursuant to this subsection.

24 d. A competitive cable service provider or competitive
25 video service provider may identify and collect the amount of
26 the franchise fee as a separate line item on the regular bill
27 of each subscriber.

28 2. A municipality may require a competitive cable service
29 provider or competitive video service provider to pay a permit
30 fee if the municipality imposes the same permit fee on the
31 incumbent cable provider, and any permit fee shall not exceed
32 the actual, direct costs incurred by the municipality for
33 issuing the relevant permit. In no event may a permit fee
34 under this subsection be levied under any of the following
35 circumstances:

1 a. If the competitive cable service provider or
2 competitive video service provider already has paid a permit
3 fee of any kind in connection with the same activity that
4 would otherwise be covered by the permit fee under this
5 subsection or is otherwise authorized by law or contract to
6 place the facilities used by the competitive cable service
7 provider or competitive video service provider in the public
8 right-of-way.

9 b. For general revenue purposes.

10 Sec. 9. NEW SECTION. 477A.9 NONDISCRIMINATION BY
11 MUNICIPALITY.

12 1. A municipality shall allow the holder of a certificate
13 of franchise authority to install, construct, and maintain a
14 communications network within a public right-of-way and shall
15 provide the holder of a certificate of franchise authority
16 with open, comparable, nondiscriminatory, and competitively
17 neutral access to the public right-of-way.

18 2. A municipality shall not discriminate against the
19 holder of a certificate of franchise authority in providing
20 access to a municipal building or through a municipal utility
21 pole attachment term.

22 Sec. 10. NEW SECTION. 477A.10 PROVIDER DISCRIMINATION
23 PROHIBITED.

24 1. The purpose of this section is to prevent
25 discrimination among potential residential subscribers.

26 2. A competitive cable service provider or competitive
27 video service provider holding a certificate of franchise
28 authority shall not deny access to any group of potential
29 residential subscribers because of the income of residents in
30 the local area in which such group resides.

31 3. The holder of a certificate of franchise authority may
32 use direct-to-home satellite service or another alternative
33 technology that provides comparable content, service, and
34 functionality to satisfy the requirements of this section.

35 Sec. 11. NEW SECTION. 477A.11 APPLICABILITY OF OTHER

1 LAW.

2 1. This chapter is intended to be consistent with the
3 federal Cable Act, 47 U.S.C. § 521 et seq.

4 2. Except as otherwise stated in this chapter, this
5 chapter shall not be interpreted to prevent a competitive
6 cable service provider, competitive video service provider,
7 municipality, or other provider of cable service or video
8 service from seeking clarification of any rights and
9 obligations under federal law or to exercise any right or
10 authority under federal or state law.

11 Sec. 12. NEW SECTION. 477A.12 RULES.

12 The secretary of state shall adopt rules necessary to
13 administer this chapter.

14 Sec. 13. EFFECTIVE DATE. This Act, being deemed of
15 immediate importance, takes effect upon enactment.

16 EXPLANATION

17 This bill relates to franchises for the provision of cable
18 service or video service.

19 Under current law, each city has the authority to grant a
20 franchise for the provision of cable television service under
21 Code section 364.2. This bill requires a person providing
22 cable service or video service, as defined by the bill, to
23 apply for and receive a certificate of franchise authority
24 from the secretary of state to provide cable service or video
25 service in the service area listed on the certificate of
26 franchise authority. Persons providing cable service or video
27 service under a franchise agreement with a municipality prior
28 to July 1, 2006, are not required to apply for a certificate
29 of franchise authority until the franchise agreement expires
30 or is terminated as provided by the bill. A local exchange
31 utility with a certificate of convenience that provides local
32 telephone service operating or seeking to operate as a
33 competitive cable service provider or competitive video
34 service provider shall be deemed to hold a certificate of
35 franchise authority upon the effective date of the bill. A

1 competitive cable service provider or competitive video
2 service provider shall provide notice to each municipality in
3 the service area granted under the certificate of franchising
4 authority that the provider offers or intends to offer cable
5 service or video service.

6 The bill provides for certain application requirements to
7 receive a certificate of franchise authority, including an
8 affirmation of compliance with certain federal requirements,
9 agreement to comply with municipal right-of-way ordinances, a
10 description of the service area, and the address of the
11 applicant's principal place of business. The bill provides
12 for the certificate of franchise authority to contain certain
13 information, including an explicit grant of authority of the
14 holder of the certificate to provide cable service or video
15 service in a specific service area described by the
16 certificate. A certificate of franchise authority is
17 transferable. The bill requires a holder of a certificate of
18 franchise authority to file a notice of transfer with the
19 secretary of state at least fourteen days prior to transfer.
20 The holder of a certificate of authority may terminate the
21 certificate by providing written notice to the secretary of
22 state.

23 The bill provides that a certificate of franchise authority
24 shall be considered a "franchise" within the meaning of
25 certain federal laws and that only the state of Iowa shall be
26 considered the franchising authority for competitive cable
27 service providers and competitive video service providers in
28 this state.

29 The bill provides that there is not an intent under new
30 Code chapter 477A to adversely affect the contractual rights,
31 duties, and existing obligations of persons providing cable
32 service or video service.

33 The bill prohibits municipalities from requiring a holder
34 of a certificate of franchise authority to comply with
35 mandatory build-out provisions, obtain a separate franchise,

1 pay additional fees other than as provided in the bill, and
2 comply with additional franchise requirements other than as
3 provided in the bill. The bill provides that Code section
4 364.2, relating to the powers of cities to grant franchises,
5 and Code section 364.3, subsection 7, relating to city-
6 operated cable service systems, shall not apply to a holder of
7 a certificate of franchise authority.

8 Upon request by a municipality, the bill requires a holder
9 of a certificate of franchise authority granted by the
10 municipality to designate capacity on the certificate holder's
11 communications network to allow for the provision of channels
12 or capacity for public, educational, or governmental
13 programming by a competitive cable service provider or
14 competitive video service provider. The bill requires a
15 holder of a certificate of authority and an incumbent cable
16 service provider to use reasonable efforts to combine the
17 cable or video network of the certificate holder and incumbent
18 provider to provide public, educational, and government
19 programming.

20 The bill requires a competitive cable service provider and
21 a competitive video service provider to calculate and pay a
22 franchise fee to a municipality in which the provider is
23 offering cable service or video service. The franchise fee
24 must be requested by the municipality and paid not later than
25 45 days after each quarter. The franchise fee shall be
26 calculated as a percentage of gross revenues which shall be a
27 percentage set by the municipality not to exceed the
28 percentage paid by the incumbent cable provider or five
29 percent of gross revenues, whichever is less. The bill
30 provides a definition of "gross revenues". The municipality
31 may not demand any additional franchise fees or another method
32 of calculation of the franchise fee. The municipality may
33 only charge one franchise fee per competitive provider
34 regardless of whether the provider provides both cable service
35 and video service. The municipality may charge a permit fee

1 to a competitive cable service provider or competitive video
2 service provider if the municipality imposes the same fee on
3 the incumbent cable provider of the municipality.

4 The bill provides for nondiscrimination with respect to
5 holders of certificates of franchise authority by a
6 municipality regarding the installation, construction, and
7 maintenance of a communications network in the municipality's
8 right-of-way. The municipality cannot discriminate against a
9 holder of a certificate of authority regarding access to a
10 building and a municipal utility pole attachment term.

11 The bill prohibits a competitive cable service provider and
12 competitive video service provider with a certificate of
13 franchise authority from denying access to the provider's
14 services to any group of potential residential subscribers due
15 to the residents' income.

16 The bill contains a general applicability clause for
17 consistency with the federal Cable Act. The bill provides
18 authority for the secretary of state to adopt rules necessary
19 to administer new Code chapter 477A.

20 The bill is effective upon enactment.

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CORRECTED HSB 670

COMMERCE, REGULATION & LABOR

Watts, Ch.
Struyk
Sands
May
Jacoby
Kressig
T. Taylor

HOUSE FILE ^{CU D} Sr. 02647
BY (PROPOSED COMMITTEE ON
COMMERCE, REGULATION AND
LABOR BILL BY CHAIRPERSON
JENKINS)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

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33 (2) Revenues received by any affiliate or any other person
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9 services, or any other revenues attributed by the competitive
10 cable service provider or competitive video service provider
11 to noncable service or nonvideo service in accordance with any
12 applicable laws, rules, regulations, standards, or orders.

13 (5) Revenues paid by subscribers to home shopping
14 programmers directly from the sale of merchandise through any
15 home-shopping channel offered as part of the cable services or
16 video services.

17 (6) Revenues from the sale of cable services or video
18 services for resale in which the purchaser is required to
19 collect the five percent fee from the purchaser's customer.

20 (7) Revenues from any tax of general applicability imposed
21 upon the competitive cable service provider or competitive
22 video service provider or upon subscribers by a city, state,
23 federal, or any other governmental entity and required to be
24 collected by the competitive cable service provider or
25 competitive video service provider and remitted to the taxing
26 entity, including but not limited to sales or use tax, gross
27 receipts tax, excise tax, utility users tax, public service
28 tax, and communication taxes, and including the franchise fee
29 imposed under section 477A.8.

30 (8) Revenues forgone from the provision of cable services
31 or video services to public institutions, public schools, or
32 governmental entities at no charge.

33 (9) Revenues foregone from the competitive cable service
34 provider's or competitive video service provider's provision
35 of free or reduced-cost video service to any person,

1 including, without limitation, any municipality and other
2 public institutions or other institutions.

3 (10) Revenues from sales of capital assets or sales of
4 surplus equipment.

5 (11) Revenues from reimbursements by programmers of
6 marketing costs incurred by the competitive cable service
7 provider or competitive video service provider for the
8 introduction or promotion of new programming.

9 (12) Directory or internet advertising revenues including
10 but not limited to yellow page, white page, banner
11 advertisement, and electronic publishing.

12 (13) Copyright fees paid to the United States copyright
13 office.

14 8. "Incumbent cable provider" means the cable operator
15 serving the largest number of cable subscribers in a
16 particular franchise service area on July 1, 2006.

17 9. "Municipality" means a county or city.

18 10. "Percentage of gross revenues" means the percentage
19 set by the municipality and identified in a written request
20 made under section 477A.8, subsection 1, which shall be not
21 greater than the most recent percentage paid by the incumbent
22 cable provider as a franchise fee or five percent, whichever
23 is less.

24 11. "Public right-of-way" means the area on, below, or
25 above a public roadway, highway, street, bridge, cart way,
26 bicycle lane, or public sidewalk in which the municipality has
27 an interest, including other dedicated rights-of-way for
28 travel purposes and utility easements. "Public right-of-way"
29 does not include the airwaves above a public right-of-way with
30 regard to cellular or other nonwire telecommunications or
31 broadcast services or utility poles owned by a municipality or
32 a municipal utility.

33 12. "Video programming" means the same as defined in 47
34 U.S.C. § 522.

35 13. "Video service" means video programming services

1 provided through wireline facilities located at least in part
2 in the public right-of-way without regard to delivery
3 technology, including internet protocol technology. "Video
4 service" does not include any video programming provided by a
5 provider of commercial mobile service as defined in 47 U.S.C.
6 § 332, or cable service provided by an incumbent cable
7 provider or a competitive cable service provider.

8 Sec. 2. NEW SECTION. 477A.2 CERTIFICATE OF FRANCHISE
9 AUTHORITY REQUIREMENT.

10 1. Except as otherwise provided in this chapter, a person
11 providing cable service or video service in this state on or
12 after July 1, 2006, shall not provide such service without
13 obtaining a certificate of franchise authority issued by the
14 secretary of state.

15 2. A local exchange utility providing local telephone
16 service in this state and certified pursuant to section 476.29
17 that seeks to operate or operates as a competitive cable
18 service provider or competitive video service provider, or any
19 affiliate of such local exchange utility that seeks to operate
20 or operates as a competitive cable service provider or
21 competitive video service provider, shall be deemed to hold a
22 certificate of franchise authority issued by the secretary of
23 state upon the effective date of this Act. A local exchange
24 utility or an affiliate of a local exchange utility shall not
25 be required to apply for a certificate of franchise authority
26 pursuant to section 477A.3 except as required by rule.

27 3. a. A person providing cable service or video service
28 under a franchise agreement with a municipality prior to July
29 1, 2006, is not subject to this section with respect to such
30 municipality until the franchise agreement expires or is
31 terminated pursuant to paragraph "b".

32 b. A person providing cable service or video service that
33 is not the incumbent cable service provider and serves fewer
34 than forty percent of the total cable customers in a specific
35 municipality's franchise area may elect to terminate a

1 franchise agreement with the municipality and seek a
2 certificate of franchise authority from the secretary of state
3 by providing written notice to the secretary of state and the
4 affected municipality before January 1, 2007. The franchise
5 agreement with the municipality is terminated on the date the
6 secretary of state issues the certificate of franchise
7 authority to the person terminating the agreement. A person
8 providing cable service or video service who elects to
9 terminate a franchise agreement with a municipality under this
10 paragraph shall remit to the municipality within ninety days
11 after the date of termination any accrued but unpaid franchise
12 fees due under the terminated franchise agreement. If credit
13 remains from prepaid franchise fees under the franchise
14 agreement, the person providing cable service or video service
15 may deduct the amount of the remaining credit from any future
16 fees or taxes the person is required to pay to the
17 municipality under the franchise agreement.

18 4. For purposes of this section, a person providing cable
19 service or video service is deemed to have executed a
20 franchise agreement to provide cable service or video service
21 with a specific municipality if an affiliate or successor of
22 the person providing cable service or video service has
23 executed a franchise agreement with that municipality.

24 5. A competitive cable service provider or competitive
25 video service provider shall provide notice to each
26 municipality with authority to grant a franchise in the
27 service area in which the competitive cable service provider
28 or competitive video service provider is granted authority to
29 provide service under a certificate of franchise authority
30 that the competitive cable service provider or competitive
31 video service provider offers or intends to offer cable
32 services or video services within the jurisdiction of the
33 municipality.

34 6. As used in this section, "affiliate" or "successor"
35 includes but is not limited to a person that directly, or

1 indirectly through one or more intermediaries, controls, is
2 controlled by, or is under common control with a person
3 receiving, obtaining, or operating under a franchise agreement
4 with a municipality to provide cable service or video service
5 through merger, sale, assignment, restructuring, or any other
6 type of transaction.

7 Sec. 3. NEW SECTION. 477A.3 APPLICATION REQUIREMENTS --
8 CERTIFICATE OF FRANCHISE AUTHORITY.

9 1. The secretary of state shall issue a certificate of
10 franchise authority under this chapter after receipt of a
11 completed application and affidavit submitted by the applicant
12 and signed by an officer or general partner of the applicant.
13 The application and affidavit shall provide all of the
14 following information:

15 a. That the applicant has filed or will timely file with
16 the federal communications commission all forms required by
17 the commission in advance of offering cable service or video
18 service in this state.

19 b. That the applicant agrees to comply with all applicable
20 federal and state statutes, regulations, and rules.

21 c. That the applicant agrees to comply with all applicable
22 municipal ordinances and regulations regarding the use and
23 occupation of a public right-of-way in the delivery of the
24 cable service or video service, including the police powers of
25 the municipalities in which the service is delivered.

26 d. A description of the service area to be served and the
27 municipalities to be served by the applicant which may include
28 certain designations of unincorporated areas. This
29 description shall be updated by the applicant prior to the
30 expansion of cable service or video service to a previously
31 undesignated service area and, upon such expansion, notice
32 shall be given to the federal communications commission of the
33 service area to be served by the applicant.

34 e. The address of the applicant's principal place of
35 business and the names of the applicant's principal executive

1 officers.

2 2. The certificate of franchise authority issued by the
3 secretary of state shall contain all of the following:

4 a. A grant of authority to provide cable service or video
5 service in a specific service area and a description of the
6 service area.

7 b. A grant of authority to use and occupy the public
8 right-of-way in the delivery of cable service or video
9 service, subject to the laws of this state, including the
10 police powers of the municipalities in which the service is
11 delivered.

12 c. A statement that the grant of authority provided by the
13 certificate is subject to the lawful operation of the cable
14 service or video service by the applicant or the applicant's
15 successor.

16 3. A certificate of franchise authority issued by the
17 secretary of state is fully transferable to any successor of
18 the applicant to which the certificate was initially issued.
19 A notice of transfer shall be filed by the holder of the
20 certificate of franchise authority with the secretary of state
21 and the affected municipality within fourteen business days of
22 the completion of the transfer of the certificate of franchise
23 authority.

24 4. The certificate of franchise authority issued by the
25 secretary of state may be terminated by a person providing
26 cable service or video service by submitting written notice to
27 the secretary of state.

28 Sec. 4. NEW SECTION. 477A.4 APPLICABILITY TO FEDERAL
29 LAW.

30 To the extent required by applicable law, a certificate of
31 franchise authority issued under this chapter shall constitute
32 a "franchise" for the purposes of 47 U.S.C. § 541(b)(1). To
33 the extent required for the purposes of 47 U.S.C. § 521-561,
34 only the state of Iowa shall constitute the exclusive
35 franchising authority for competitive cable service providers

1 and competitive video service providers in this state.

2 Sec. 5. NEW SECTION. 477A.5 APPLICABILITY TO EXISTING
3 PROVIDERS.

4 Except as otherwise provided in this chapter, this chapter
5 is not intended to abrogate, nullify, or adversely affect in
6 any way the contractual rights, duties, and obligations
7 existing and incurred by a person providing cable service or
8 video service before the effective date of this Act, and owed
9 or owing to any private person, firm, partnership,
10 corporation, or other entity including, without limitation,
11 those obligations measured by and related to the gross revenue
12 to be received by the holder of a certificate of franchise
13 authority for services provided in the service area to which
14 such prior franchise or permit applies.

15 All liens, security interests, royalties, and other
16 contracts, rights, and interests in effect on the effective
17 date of this Act, shall continue in full force and effect,
18 without the necessity for renewal, extension, or continuance,
19 and shall be paid and performed by the holder of a certificate
20 of franchise authority, and shall apply as though the revenues
21 generated by the holder of a certificate of franchise
22 authority continued to be generated pursuant to the permit or
23 franchise issued by the prior local franchising authority or
24 municipality within the service area to which the prior permit
25 or franchise applies.

26 It shall be a condition to the issuance and continuance of
27 a certificate of franchise authority that the private
28 contractual rights and obligations herein described continue
29 to be honored, paid, or performed to the same extent as though
30 the cable service provider continued to operate under its
31 prior franchise agreement, for the duration of the certificate
32 of franchise authority and any renewals or extensions of the
33 prior franchise agreement, and that the applicant so agrees.

34 Any person holding or claiming rights herein reserved may
35 enforce the rights by an action brought in a court of

1 competent jurisdiction.

2 Sec. 6. NEW SECTION. 477A.6 MUNICIPALITY RESTRICTIONS.

3 1. A municipality shall not require a holder of a
4 certificate of franchise authority to do any of the following:

5 a. Comply with a mandatory build-out provision.

6 b. Obtain a separate franchise.

7 c. Pay any additional fees, except as provided in this
8 chapter.

9 d. Be subject to any additional franchise requirement by
10 the municipality, except as provided in this chapter.

11 2. For purposes of this section, a "franchise requirement"
12 includes any provision regulating rates or requiring build-out
13 requirements to deploy any facilities or equipment.

14 3. Section 364.2 and section 364.3, subsection 7, shall
15 not apply to a holder of a certificate of franchise authority
16 issued pursuant to this chapter.

17 Sec. 7. NEW SECTION. 477A.7 PUBLIC, EDUCATIONAL, AND
18 GOVERNMENT ACCESS CHANNELS.

19 1. Not later than one hundred eighty days after a request
20 by a municipality in which a competitive cable service
21 provider or a competitive video service provider is providing
22 cable service or video service, the holder of the certificate
23 of authority for that municipality shall designate a
24 sufficient amount of capacity on the certificate holder's
25 communications network to allow the provision of a comparable
26 number of channels or capacity for the municipality to provide
27 public, educational, and governmental noncommercial
28 programming by the competitive cable service provider or
29 competitive video service provider.

30 a. The public, educational, and governmental content to be
31 provided pursuant to this section shall be the responsibility
32 of the municipality receiving the benefit of such capacity.
33 The holder of a certificate of franchise authority shall be
34 responsible only for the transmission of such content, subject
35 to technological restraints.

1 b. The municipality receiving additional capacity under
2 this section shall ensure that all transmissions, content, or
3 programming to be transmitted by the holder of the certificate
4 of franchise authority are provided or submitted to the
5 competitive cable service provider or competitive video
6 service provider in a manner or form that is capable of being
7 accepted and transmitted by the competitive cable service or
8 competitive video service provider, without requirement for
9 additional alteration or change in the content, over the
10 particular network of the competitive cable service provider
11 or competitive video service provider, which is compatible
12 with the technology or protocol utilized by the competitive
13 cable service provider or competitive video service provider
14 to deliver services.

15 2. Where technically feasible, a competitive cable service
16 provider or competitive video service provider that is a
17 holder of a certificate of franchise authority and an
18 incumbent cable service provider shall use reasonable efforts
19 to interconnect the cable or video communications network
20 systems of the certificate holder and incumbent cable service
21 provider for the purpose of providing public, educational, and
22 government programming. Interconnection may be accomplished
23 by direct cable, microwave link, satellite, or other
24 reasonable method of connection. A holder of a certificate of
25 franchise authority and an incumbent cable service provider
26 shall negotiate in good faith and an incumbent cable service
27 provider shall not withhold interconnection of public,
28 educational, or government channels.

29 3. A court of competent jurisdiction shall have exclusive
30 jurisdiction to enforce any requirement under this section.

31 Sec. 8. NEW SECTION. 477A.8 FEES.

32 1. a. In any service area in which a competitive cable
33 service provider or a competitive video service provider
34 holding a certificate of franchise authority offers or
35 provides cable service or video service, the competitive cable

1 service provider or competitive video service provider shall
2 calculate and pay a franchise fee to the municipality with
3 authority to grant a certificate of franchise authority in
4 that service area upon the municipality's written request. If
5 the municipality makes such a request, the franchise fee shall
6 be due on a quarterly basis, not later than forty-five days
7 after the close of the quarter, and shall be calculated as a
8 percentage of gross revenues. The municipality shall not
9 demand any additional franchise fees from the competitive
10 cable service provider or competitive video service provider,
11 and shall not demand the use of any other calculation method
12 for the franchise fee.

13 b. A provider who is both a competitive cable service
14 provider and a competitive video service provider shall be
15 subject to and only be required to pay one franchise fee to a
16 municipality under this subsection regardless of whether the
17 provider provides both cable service and video service.

18 c. At the request of a municipality and not more than once
19 per year, the auditor of state may perform reasonable audits
20 of the competitive cable service provider's or competitive
21 video service provider's calculation of the franchise fee
22 under this subsection. The municipality shall bear the costs
23 of any audit requested pursuant to this subsection.

24 d. A competitive cable service provider or competitive
25 video service provider may identify and collect the amount of
26 the franchise fee as a separate line item on the regular bill
27 of each subscriber.

28 2. A municipality may require a competitive cable service
29 provider or competitive video service provider to pay a permit
30 fee if the municipality imposes the same permit fee on the
31 incumbent cable provider, and any permit fee shall not exceed
32 the actual, direct costs incurred by the municipality for
33 issuing the relevant permit. In no event may a permit fee
34 under this subsection be levied under any of the following
35 circumstances:

1 a. If the competitive cable service provider or
2 competitive video service provider already has paid a permit
3 fee of any kind in connection with the same activity that
4 would otherwise be covered by the permit fee under this
5 subsection or is otherwise authorized by law or contract to
6 place the facilities used by the competitive cable service
7 provider or competitive video service provider in the public
8 right-of-way.

9 b. For general revenue purposes.

10 Sec. 9. NEW SECTION. 477A.9 NONDISCRIMINATION BY
11 MUNICIPALITY.

12 1. A municipality shall allow the holder of a certificate
13 of franchise authority to install, construct, and maintain a
14 communications network within a public right-of-way and shall
15 provide the holder of a certificate of franchise authority
16 with open, comparable, nondiscriminatory, and competitively
17 neutral access to the public right-of-way.

18 2. A municipality shall not discriminate against the
19 holder of a certificate of franchise authority in providing
20 access to a municipal building or through a municipal utility
21 pole attachment term.

22 Sec. 10. NEW SECTION. 477A.10 PROVIDER DISCRIMINATION
23 PROHIBITED.

24 1. The purpose of this section is to prevent
25 discrimination among potential residential subscribers.

26 2. A competitive cable service provider or competitive
27 video service provider holding a certificate of franchise
28 authority shall not deny access to any group of potential
29 residential subscribers because of the income of residents in
30 the local area in which such group resides.

31 3. The holder of a certificate of franchise authority may
32 use direct-to-home satellite service or another alternative
33 technology that provides comparable content, service, and
34 functionality to satisfy the requirements of this section.

35 Sec. 11. NEW SECTION. 477A.11 APPLICABILITY OF OTHER

1 LAW.

2 1. This chapter is intended to be consistent with the
3 federal Cable Act, 47 U.S.C. § 521 et seq.

4 2. Except as otherwise stated in this chapter, this
5 chapter shall not be interpreted to prevent a competitive
6 cable service provider, competitive video service provider,
7 municipality, or other provider of cable service or video
8 service from seeking clarification of any rights and
9 obligations under federal law or to exercise any right or
10 authority under federal or state law.

11 Sec. 12. NEW SECTION. 477A.12 RULES.

12 The secretary of state shall adopt rules necessary to
13 administer this chapter.

14 Sec. 13. EFFECTIVE DATE. This Act, being deemed of
15 immediate importance, takes effect upon enactment.

16 EXPLANATION

17 This bill relates to franchises for the provision of cable
18 service or video service.

19 Under current law, each city has the authority to grant a
20 franchise for the provision of cable television service under
21 Code section 364.2. This bill requires a person providing
22 cable service or video service, as defined by the bill, to
23 apply for and receive a certificate of franchise authority
24 from the secretary of state to provide cable service or video
25 service in the service area listed on the certificate of
26 franchise authority. Persons providing cable service or video
27 service under a franchise agreement with a municipality prior
28 to July 1, 2006, are not required to apply for a certificate
29 of franchise authority until the franchise agreement expires
30 or is terminated as provided by the bill. A local exchange
31 utility with a certificate of convenience that provides local
32 telephone service operating or seeking to operate as a
33 competitive cable service provider or competitive video
34 service provider shall be deemed to hold a certificate of
35 franchise authority upon the effective date of the bill. A

1 competitive cable service provider or competitive video
2 service provider shall provide notice to each municipality in
3 the service area granted under the certificate of franchising
4 authority that the provider offers or intends to offer cable
5 service or video service.

6 The bill provides for certain application requirements to
7 receive a certificate of franchise authority, including an
8 affirmation of compliance with certain federal requirements,
9 agreement to comply with municipal right-of-way ordinances, a
10 description of the service area, and the address of the
11 applicant's principal place of business. The bill provides
12 for the certificate of franchise authority to contain certain
13 information, including an explicit grant of authority of the
14 holder of the certificate to provide cable service or video
15 service in a specific service area described by the
16 certificate. A certificate of franchise authority is
17 transferable. The bill requires a holder of a certificate of
18 franchise authority to file a notice of transfer with the
19 secretary of state at least fourteen days prior to transfer.
20 The holder of a certificate of authority may terminate the
21 certificate by providing written notice to the secretary of
22 state.

23 The bill provides that a certificate of franchise authority
24 shall be considered a "franchise" within the meaning of
25 certain federal laws and that only the state of Iowa shall be
26 considered the franchising authority for competitive cable
27 service providers and competitive video service providers in
28 this state.

29 The bill provides that there is not an intent under new
30 Code chapter 477A to adversely affect the contractual rights,
31 duties, and existing obligations of persons providing cable
32 service or video service.

33 The bill prohibits municipalities from requiring a holder
34 of a certificate of franchise authority to comply with
35 mandatory build-out provisions, obtain a separate franchise,

1 pay additional fees other than as provided in the bill, and
2 comply with additional franchise requirements other than as
3 provided in the bill. The bill provides that Code section
4 364.2, relating to the powers of cities to grant franchises,
5 and Code section 364.3, subsection 7, relating to city-
6 operated cable service systems, shall not apply to a holder of
7 a certificate of franchise authority.

8 Upon request by a municipality, the bill requires a holder
9 of a certificate of franchise authority granted by the
10 municipality to designate capacity on the certificate holder's
11 communications network to allow for the provision of channels
12 or capacity for public, educational, or governmental
13 programming by a competitive cable service provider or
14 competitive video service provider. The bill requires a
15 holder of a certificate of authority and an incumbent cable
16 service provider to use reasonable efforts to combine the
17 cable or video network of the certificate holder and incumbent
18 provider to provide public, educational, and government
19 programming.

20 The bill requires a competitive cable service provider and
21 a competitive video service provider to calculate and pay a
22 franchise fee to a municipality in which the provider is
23 offering cable service or video service. The franchise fee
24 must be requested by the municipality and paid not later than
25 45 days after each quarter. The franchise fee shall be
26 calculated as a percentage of gross revenues which shall be a
27 percentage set by the municipality not to exceed the
28 percentage paid by the incumbent cable provider or five
29 percent of gross revenues, whichever is less. The bill
30 provides a definition of "gross revenues". The municipality
31 may not demand any additional franchise fees or another method
32 of calculation of the franchise fee. The municipality may
33 only charge one franchise fee per competitive provider
34 regardless of whether the provider provides both cable service
35 and video service. The municipality may charge a permit fee

1 to a competitive cable service provider or competitive video
2 service provider if the municipality imposes the same fee on
3 the incumbent cable provider of the municipality.

4 The bill provides for nondiscrimination with respect to
5 holders of certificates of franchise authority by a
6 municipality regarding the installation, construction, and
7 maintenance of a communications network in the municipality's
8 right-of-way. The municipality cannot discriminate against a
9 holder of a certificate of authority regarding access to a
10 building and a municipal utility pole attachment term.

11 The bill prohibits a competitive cable service provider and
12 competitive video service provider with a certificate of
13 franchise authority from denying access to the provider's
14 services to any group of potential residential subscribers due
15 to the residents' income.

16 The bill contains a general applicability clause for
17 consistency with the federal Cable Act. The bill provides
18 authority for the secretary of state to adopt rules necessary
19 to administer new Code chapter 477A.

20 The bill is effective upon enactment.

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