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SENATE FILE 2341  
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 3146)

Passed Senate, Date \_\_\_\_\_ Passed House, 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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SF 2341

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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**SENATE FILE 2361**

**S-5187**

1 Amend Senate File 2361 as follows:  
2 1. Page 3, line 23, by inserting after the word  
3 "less." the following: "However, if the incumbent  
4 cable provider is a municipal utility providing  
5 telecommunications services under section 388.10,  
6 "percentage of gross revenues" means the percentage  
7 set by the municipality and identified in a written  
8 request made under section 477A.8, subsection 1, which  
9 shall equal an equitable apportionment of the services  
10 and fees that the municipal utility pays to the  
11 municipality."  
12 2. Page 4, by inserting after line 31 the  
13 following:  
14 "b. A municipality that provides cable service or  
15 video service in this state is not subject to this  
16 section and shall not be required to obtain a  
17 certificate of franchise authority pursuant to this  
18 chapter."  
19 3. By renumbering, redesignating, and correcting  
20 internal references as necessary.

**By** JEFF DANIELSON

**S-5187 FILED APRIL 11, 2006**

SENATE FILE 2361

S-5131

1 Amend Senate File 2361 as follows:

2 1. Page 1, by inserting before line 1 the  
3 following:

4 "Sec. \_\_\_\_ . PURPOSE. It is the purpose of this Act  
5 to encourage competition in the provision of cable  
6 service and video service in this state, to encourage  
7 new providers of cable service and video service, and  
8 to provide consumers additional choices in cable  
9 service and video service."

10 2. Page 2, line 1, by inserting after the word  
11 "to" the following: "third parties, including".

12 3. Page 2, line 4, by inserting after the word  
13 "Revenues" the following: "derived by the holder of a  
14 certificate of franchise authority".

15 4. Page 2, line 12, by striking the words  
16 "applicable laws," and inserting the following:  
17 "federal communications commission".

18 5. Page 2, line 19, by striking the words "five  
19 percent" and inserting the following: "franchise".

20 6. Page 2, line 29, by striking the figure  
21 "477A.8" and inserting the following: "477A.7".

22 7. Page 3, line 20, by striking the figure  
23 "477A.8" and inserting the following: "477A.7".

24 8. Page 4, by striking line 10 and inserting the  
25 following:

26 "1. After July 1, 2006, a person".

27 9. Page 4, lines 11 and 12, by striking the words  
28 and figures "on or after July 1, 2006,".

29 10. Page 4, by striking line 13 and inserting the  
30 following: "a franchise. The franchise may be issued  
31 by either the".

32 11. Page 4, line 14, by inserting after the word  
33 "state" the following: "pursuant to section 477A.3 or  
34 by a municipality pursuant to section 364.2".

35 12. Page 4, by striking lines 15 through 26.

36 13. Page 4, line 27, by striking the word "a."

37 14. Page 4, line 31, by striking the words  
38 "paragraph "b"" and inserting the following: "this  
39 chapter".

40 15. By striking page 4, line 32, through page 5,  
41 line 17.

42 16. Page 5, line 21, by striking the word  
43 "successor" and inserting the following:  
44 "predecessor".

45 17. Page 5, line 25, by inserting after the word  
46 "provide" the following: "at least thirty days'".

47 18. Page 5, line 34, by striking the words "or  
48 "successor"".

49 19. Page 6, by inserting after line 6 the  
50 following:

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1 "\_\_\_\_. a. If an incumbent cable provider and one  
2 or more competitive cable service providers or  
3 competitive video service providers are providing  
4 cable service or video service within the jurisdiction  
5 of a municipality, an incumbent cable provider with an  
6 existing franchise agreement with the municipality may  
7 request that the municipality modify the terms of the  
8 existing franchise agreement to conform to the terms  
9 and conditions of a franchise granted to a competitive  
10 cable service provider or competitive video service  
11 provider as a holder of a certificate of franchise  
12 authority that includes the municipality. The  
13 incumbent cable provider requesting a modification  
14 shall identify in writing the terms and conditions of  
15 the existing franchise that are materially different  
16 from the franchise of the holder of a certificate of  
17 franchise authority, whether such differences impose  
18 greater or lesser burdens on the incumbent cable  
19 provider. Upon receipt of such request from an  
20 incumbent cable provider, the incumbent cable operator  
21 and the municipality shall negotiate the franchise  
22 modification terms in good faith for a period of sixty  
23 days. If within sixty days, the municipality and the  
24 incumbent cable provider cannot reach agreeable terms,  
25 the incumbent cable provider may file a modification  
26 request pursuant to paragraph "b".

27 b. If an incumbent cable provider and one or more  
28 competitive cable service providers or competitive  
29 video service providers are providing cable service or  
30 video service within the jurisdiction of a  
31 municipality, an incumbent cable provider may seek a  
32 modification of the existing franchise terms and  
33 conditions to conform to the terms and conditions of a  
34 franchise of a competitive cable service provider or  
35 competitive video service provider as a holder of a  
36 certificate of franchise authority that includes the  
37 municipality pursuant to the provisions of 47 U.S.C. §  
38 545. In an application for modification, an incumbent  
39 cable provider shall identify the terms and conditions  
40 of the existing franchise that are materially  
41 different from the terms and conditions of the  
42 franchise of the holder of a certificate of franchise  
43 authority, whether such differences impose greater or  
44 lesser burdens on the incumbent cable provider. The  
45 municipality shall grant the modification request  
46 within one hundred twenty days, and after a public  
47 hearing, for any provisions where there are material  
48 differences between the existing franchise and the  
49 franchise of the holder of the certificate of  
50 franchise authority. Any provision of the existing

1 franchise may be modified. If an incumbent cable  
2 provider is denied a modification request pursuant to  
3 this paragraph, the existing franchise shall be null  
4 and void and the incumbent cable provider may apply  
5 for a certificate of franchise authority under section  
6 477A.3."

7 20. Page 6, line 10, by inserting after the word  
8 "chapter" the following: "within fifteen business  
9 days".

10 21. Page 6, line 21, by inserting after the word  
11 "applicable" the following: "state laws and".

12 22. Page 6, line 32, by striking the words  
13 "federal communications commission" and inserting the  
14 following: "secretary of state".

15 23. Page 7, by inserting after line 1 the  
16 following:

17 "2. The failure of the secretary of state to  
18 notify the applicant of the completeness of the  
19 applicant's affidavit or issue a certificate of  
20 franchise authority before the fifteenth business day  
21 after receipt of a completed affidavit shall  
22 constitute issuance of the certificate of franchise  
23 authority applied for by the applicant without further  
24 action by the applicant."

25 24. Page 7, by striking lines 5 and 6 and  
26 inserting the following: "service in the service area  
27 designated in the application."

28 25. By striking page 8, line 2, through page 9,  
29 line 1.

30 26. Page 9, line 2, by striking the figure  
31 "477A.6" and inserting the following: "477A.5".

32 27. Page 9, line 14, by striking the words and  
33 figures "and section 364.3, subsection 7,".

34 28. Page 9, line 17, by striking the figure  
35 "477A.7" and inserting the following: "477A.6".

36 29. Page 9, by striking lines 26 through 29 and  
37 inserting the following: "number of public,  
38 educational, and governmental channels that the  
39 existing provider in the municipality has activated  
40 and provided in the municipality under the terms of a  
41 franchise agreement with a municipality prior to July  
42 1, 2006. If no such channels are active, the  
43 municipality may request a maximum of three public,  
44 educational, and governmental channels for a  
45 municipality with a population of at least fifty  
46 thousand, and a maximum of two public, educational,  
47 and governmental channels for a municipality with a  
48 population of less than fifty thousand."

49 30. Page 10, line 1, by striking the word  
50 "additional".

1 31. Page 10, line 14, by inserting after the word  
2 "services." the following: "The provision of such  
3 transmissions, content, or programming to the  
4 competitive cable service provider or competitive  
5 video service provider shall constitute authorization  
6 for such holder to carry such transmissions, content,  
7 or programming, at the holder's option, beyond the  
8 jurisdictional boundaries stipulated in any franchise  
9 agreement."

10 32. Page 10, line 31, by striking the figure  
11 "477A.8" and inserting the following: "477A.7".

12 33. Page 11, line 6, by inserting after the word  
13 "due" the following: "and paid to the municipality".

14 34. Page 11, by inserting after line 12 the  
15 following:

16 "b. Upon the expiration of an existing franchise  
17 agreement, if the incumbent cable provider elects to  
18 possess a certificate of franchise authority, the  
19 incumbent cable provider shall pay a franchise fee to  
20 the municipality in an amount equal to the same  
21 percent of gross revenues as had been assessed  
22 immediately prior to the termination of the incumbent  
23 cable operator's franchise."

24 35. Page 12, by inserting after line 9 the  
25 following:

26 "\_\_\_\_. If an incumbent cable provider pays any fee  
27 to a municipality for public, educational, and  
28 government access channels, any subsequent holder of a  
29 certificate of franchise authority that includes that  
30 municipality shall pay this fee at the same rate. All  
31 fees collected pursuant to this subsection shall be  
32 used only for the support of the public, educational,  
33 and government access channels.

34 Sec. \_\_\_\_ . NEW SECTION. 477A.8 CUSTOMER SERVICE  
35 STANDARDS.

36 The holder of a certificate of franchise authority  
37 shall comply with customer service requirements  
38 consistent with those contained in 47 C.F.R. §  
39 76.309."

40 36. By renumbering, redesignating, and correcting  
41 internal references as necessary.

By JERRY BEHN  
STEVEN H. WARNSTADT

SENATE FILE 2361

S-5246

1 Amend Senate File 2361 as follows:

2 1. By striking page 7, line 28, through page 8,  
3 line 1 and inserting the following:

4 "Sec. \_\_\_\_ . NEW SECTION. 477A.4 MUNICIPALITY  
5 AUTHORITY.

6 1. This chapter shall not be construed to modify,  
7 impair, or supersede any of the following powers or  
8 authority of a municipality:

9 a. To manage the public rights-of-way within the  
10 jurisdiction of the municipality, including the  
11 enforcement of safety standards, and charge  
12 right-of-way management fees as provided in chapter  
13 480A.

14 b. To enact or enforce any consumer protection law  
15 or ordinance.

16 c. To enact or enforce any public safety law.

17 d. To require a person providing cable service or  
18 video service to provide a means of distributing local  
19 emergency information and instructions.

20 e. To exercise taxing authority.

21 f. To adopt fees.

22 2. In addition to any legal or equitable remedies  
23 that may be available to a municipality under the  
24 terms of a certificate of franchise authority or other  
25 applicable law, a municipality shall have the  
26 authority to do all of the following:

27 a. Impose a civil penalty for any violation of  
28 this chapter by a holder of a certificate of franchise  
29 authority issued pursuant to this chapter, or any  
30 other violation of applicable law in an amount up to  
31 five hundred dollars per day or five hundred dollars  
32 per violation, whichever is greater.

33 b. Bring an enforcement action for noncompliance  
34 with expansion requirements under section 477A.3. A  
35 defense against an action under this paragraph is  
36 limited to the following:

37 (1) Force majeure.

38 (2) A delay caused by the municipality including  
39 the inability to obtain authority to access a  
40 right-of-way in the service area."

41 2. By renumbering as necessary.

By MIKE CONNOLLY

S-5246 FILED MAY 2, 2006

SENATE FILE 2361

S-5247

1 Amend the amendment, S-5131, to Senate File 2361 as  
2 follows:

3 1. Page 3, line 8, by striking the word "fifteen"  
4 and inserting the following: "sixty".

5 2. Page 3, line 17, by striking the figure "2."  
6 and inserting the following:

7 "f. (1) That the applicant agrees to comply with  
8 the same terms and conditions as contained in the  
9 municipality's existing cable franchise, or  
10 alternatively, that the applicant requests to  
11 negotiate comparable terms according to the process  
12 established under subsection 2.

13 (2) As used in this paragraph "f", "existing cable  
14 franchise" means the franchise or certificate of  
15 franchise authority under which a provider of cable  
16 service or video service is providing such service to  
17 residents of the municipality as of the date of the  
18 applicant's application. If more than one provider is  
19 serving the municipality at the time that an  
20 application is filed, the municipality shall, upon the  
21 request of the applicant, determine which franchise  
22 shall be deemed the "existing cable franchise" for  
23 purposes of the application.

24 2. a. An applicant shall be subject to the same  
25 terms and conditions as contained in the existing  
26 cable franchise applicable in each municipality as  
27 described in subsection 1, paragraph "f", unless the  
28 municipality agrees to other terms with the applicant  
29 pursuant to paragraph "b" within sixty days of receipt  
30 of the applicant's application.

31 b. An applicant may negotiate with a municipality  
32 of the jurisdiction which the applicant proposes to  
33 serve to establish the applicant's obligations. These  
34 negotiations may include the incumbent cable provider  
35 if the municipality, the applicant, and the incumbent  
36 cable provider so desire. If an applicant and a  
37 municipality are unable to reach an agreement  
38 regarding the applicant's obligations within the  
39 municipality's jurisdiction within sixty days, all of  
40 the following requirements apply:

41 (1) The applicant shall satisfy the same  
42 conditions and obligations as contained in the  
43 existing cable franchise as described in subsection 1,  
44 paragraph "f". For in-kind contributions, the  
45 applicant may satisfy its obligations by negotiating  
46 mutually agreeable terms with the incumbent cable  
47 provider, so that the services to the community are  
48 improved or increased. If such terms cannot be agreed  
49 upon, the applicant shall pay the municipality the  
50 monetary equivalent of the incumbent cable provider's

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1 depreciated in-kind contribution, or, in the case of  
2 facilities, the annual amortization value.

3 (2) The municipality shall impose the same rules  
4 and procedures on an applicant as it imposes on the  
5 incumbent cable provider.

6 3."

7 3. Page 3, by inserting after line 27 the  
8 following:

9 "\_\_\_\_. Page 7, by inserting after line 15 the  
10 following:

11 "d. A statement describing the terms and  
12 conditions to which the grant of authority provided by  
13 the certificate of franchise authority is subject,  
14 including but not limited to any terms or conditions  
15 negotiated pursuant to section 477A.3, subsection 2,  
16 paragraph "b"."

17 4. Page 3, by striking lines 28 and 29 and  
18 inserting the following:

19 "\_\_\_\_. Page 8, by striking line 4 and inserting  
20 the following:

21 "Each cable franchise agreement in force in the  
22 state as of the effective date of this Act shall  
23 remain in full force and effect until it expires or is  
24 terminated pursuant to the terms of the franchise.  
25 Upon the expiration of a cable franchise agreement,  
26 the franchise holder may seek a certificate of  
27 franchise authority according to the procedure set out  
28 in this chapter. For purposes of section 477A.3,  
29 subsection 2, paragraph "b", such a franchise holder's  
30 prior franchise shall constitute the "existing cable  
31 franchise" in the municipality. This chapter."

32 5. By renumbering, redesignating, and correcting  
33 internal references as necessary.

**By MIKE CONNOLLY**

SENATE FILE 2361

S-5248

1 Amend Senate File 2361 as follows:

2 1. Page 10, by inserting after line 30 the  
3 following:

4 "Sec. \_\_\_\_ . NEW SECTION. 477A.7A SUPPORT FOR  
5 PUBLIC, EDUCATIONAL, AND GOVERNMENTAL CHANNELS AND FOR  
6 INSTITUTIONAL NETWORKS.

7 1. In support of facilities and equipment for  
8 public, educational, and governmental access,  
9 including institutional networks, a holder of a  
10 certificate of franchise authority shall pay to each  
11 municipality in which the holder is providing cable  
12 service or video service a fee in an amount which  
13 equals the lesser of the following two amounts:

14 a. Four percent of the holder's gross revenues.  
15 b. A fee proportionately equivalent to the value  
16 of any monetary grants and in-kind services or  
17 facilities for public, educational, or governmental  
18 access channels or institutional networks provided by  
19 an incumbent cable provider franchised by such  
20 municipality. The proportional equivalence shall be  
21 calculated by applying the ratio of the respective  
22 number of subscribers served by the incumbent cable  
23 provider and the competitive cable service provider or  
24 competitive video service provider to the value of the  
25 incumbent's grants, services, and facilities.

26 2. Any payments required to be made by a holder of  
27 a certificate of franchise authority pursuant to  
28 subsection 1 shall be made to the municipality at the  
29 same time franchise fee payments are made as required  
30 by section 477A.8, and the municipality may request  
31 reasonable audits of such holder to ensure compliance  
32 with this section.

33 3. A municipality may require a holder of a  
34 certificate of franchise authority to provide the  
35 municipality with information sufficient to calculate  
36 the proportionately equivalent fee allowed by  
37 subsection 1. Such information shall be entitled to  
38 treatment as confidential and proprietary business  
39 information.

40 4. The payments made by a holder of a certificate  
41 of franchise authority pursuant to subsection 1 shall  
42 be used by a municipality for capital facilities and  
43 equipment for public, educational, or governmental  
44 access channels or institutional networks, and such  
45 payments shall be treated as falling within 47 U.S.C.  
46 § 542(g)(2)(C).

47 5. A person providing cable services or video  
48 services shall permit any other person providing cable  
49 services or video services to connect with its public,  
50 educational, and governmental access channel feeds.

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1 The parties shall collectively decide how to  
2 accomplish this connection, taking into consideration  
3 the exact physical and technical circumstances of the  
4 cable and open video systems involved, as long as the  
5 quality of the signal is not adversely affected by the  
6 means of interconnection used. If the parties cannot  
7 agree on how to accomplish the connection, the  
8 municipality shall decide. The municipality may  
9 require, in its discretion, that the connection occur  
10 on government property or in public rights-of-way.

11 6. The costs of a connection to a provider of  
12 cable service's or video service's public,  
13 educational, and governmental access channel feeds  
14 shall be borne by the provider that is receiving the  
15 public, educational, and governmental access feeds via  
16 the interconnection.

17 7. Where there is not an incumbent cable provider,  
18 a competitive cable service provider or competitive  
19 video service provider shall make a reasonable amount  
20 of channel capacity available for public, educational,  
21 and governmental use, as well as provide reasonable  
22 support for services, facilities, and equipment  
23 relating to such public, educational, and governmental  
24 use. If a franchise agreement previously existed in  
25 that franchise area, the municipality may elect either  
26 to impose the previously existing public, educational,  
27 and governmental access obligations or to determine  
28 the competitive cable service provider's or  
29 competitive video service provider's public,  
30 educational, and governmental access obligations by  
31 comparison to the franchise agreement for the nearest  
32 operating cable system that has a commitment to  
33 provide public, educational, and governmental access  
34 and that serves a franchise area with a similar  
35 population size. The municipality shall be permitted  
36 to make a similar election every fifteen years  
37 thereafter. Absent a previous franchise agreement, a  
38 provider of cable service or video service is required  
39 to provide channel capacity, services, facilities, and  
40 equipment relating to public, educational, and  
41 governmental access equivalent to that prescribed in  
42 the franchise agreement for the nearest operating  
43 cable system with a commitment to provide public,  
44 educational, and governmental access and that serves a  
45 franchise area with a similar population size.

46 8. A provider of cable service or video service  
47 shall adjust its system to comply with new public,  
48 educational, and governmental access obligations  
49 imposed by any cable franchise renewal in the  
50 franchise area.

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1 9. Any obligations of a provider of cable service  
2 or video service to a municipality as of the effective  
3 date of this Act to provide financial or in-kind  
4 services in support of an institutional network shall  
5 continue as long as such provider, or its successors  
6 or assigns, continues to have the legal ability to  
7 provide service in the municipality."

8 2. By renumbering as necessary.

**By MIKE CONNOLLY**

**S-5248 FILED MAY 2, 2006**

SENATE FILE 2361

S-5249

1 Amend Senate File 2361 as follows:

2 1. Page 13, by inserting after line 13 the  
3 following:

4 "Sec. \_\_\_\_ . NEW SECTION. 477A.13 CABLE PROVIDER  
5 REPORTING REQUIREMENT -- FUTURE REPEAL.

6 1. Not less than thirty days after the end of the  
7 first full calendar quarter after the effective date  
8 of this Act, and quarterly thereafter, each person  
9 providing cable service or video service in this state  
10 shall submit a report to the general assembly and to  
11 each municipality in its service area containing all  
12 of the following information:

13 a. Identifying the geographic areas in each  
14 municipality where the provider offers cable service  
15 or video service.

16 b. Indicating the number of homes passed and the  
17 number of subscribers in each municipality at the end  
18 of the quarter.

19 c. Describing the provider's progress in extending  
20 cable service or video service to each municipality.

21 2. This chapter is repealed two years from the  
22 effective date of this Act unless the general assembly  
23 extends the effectiveness of this chapter for an  
24 additional two-year period by action not less than  
25 twenty months after the effective date of this Act.

26 In determining whether to extend the effectiveness of  
27 this chapter, the general assembly shall hold at least  
28 one public hearing, solicit public comment, and make  
29 written findings, as to at least the following issues:

30 a. The progress made by providers of cable service  
31 or video service other than the incumbent cable  
32 provider in extending cable service and video service  
33 in this state.

34 b. The degree to which any such progress is due to  
35 this chapter, as distinct from other factors.

36 c. The amount of additional cable and video system  
37 capacity added in the state since the effective date  
38 of this Act.

39 d. Any changes in the cost of cable service or  
40 video service in each municipality since the effective  
41 date of this Act.

42 e. Any impact of this chapter on the quality of  
43 customer service.

44 f. Any overall benefits and losses to consumers  
45 due to this chapter.

46 g. The fiscal impact of this chapter on local  
47 governments."

48 2. By renumbering as necessary.

By MIKE CONNOLLY

SENATE FILE 2361

S-5251

1 Amend the amendment, S-5131, to Senate File 2361 as  
2 follows:

3 1. Page 1, by inserting after line 9 the  
4 following:

5 "\_\_\_\_\_. Page 1, by inserting after line 3 the  
6 following:

7 "\_\_\_\_\_. "Board" means the Iowa utilities board of  
8 the utilities division of the department of commerce."

9 \_\_\_\_\_. Page 1, line 17, by striking the words  
10 "secretary of state" and inserting the following:  
11 "board".

12 2. Page 1, by striking lines 29 through 34 and  
13 inserting the following:

14 "\_\_\_\_\_. Page 4, by striking line 14 and inserting  
15 the following: "board.""

16 3. Page 3, by inserting after line 6 the  
17 following:

18 "\_\_\_\_\_. Page 6, line 9, by striking the words  
19 "secretary of state" and inserting the following:  
20 "board".

21 4. Page 3, line 14, by striking the words  
22 ""secretary of state"" and inserting the following:  
23 ""board"".

24 5. Page 3, by inserting after line 24 the  
25 following:

26 "\_\_\_\_\_. Page 7, line 3, by striking the words  
27 "secretary of state" and inserting the following:  
28 "board".

29 6. Page 3, by inserting after line 27 the  
30 following:

31 "\_\_\_\_\_. Page 7, line 17, by striking the words  
32 "secretary of state" and inserting the following:  
33 "board".

34 \_\_\_\_\_. Page 7, line 20, by striking the words  
35 "secretary of state" and inserting the following:  
36 "board".

37 \_\_\_\_\_. Page 7, line 25, by striking the words  
38 "secretary of state" and inserting the following:  
39 "board".

40 \_\_\_\_\_. Page 7, line 27, by striking the words  
41 "secretary of state" and inserting the following:  
42 "board".

43 7. Page 4, by inserting after line 39 the  
44 following:

45 "\_\_\_\_\_. Page 13, line 12, by striking the words  
46 "secretary of state" and inserting the following:  
47 "board".

48 \_\_\_\_\_. Page 13, by inserting after line 13 the  
49 following:

50 "Sec. \_\_\_\_\_. NEW SECTION. 477A.14 POWERS AND

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Page 2

1 DUTIES OF BOARD.

2 The board shall have all powers and authority  
3 granted under chapter 476 to administer and enforce  
4 the provisions of this chapter, except as otherwise  
5 provided in this chapter.""

6 8. By renumbering, relettering, redesignating,  
7 and correcting internal references as necessary.

**By** MIKE CONNOLLY

**S-5251** FILED MAY 2, 2006

SENATE FILE 2361

S-5252

1 Amend the amendment, S-5131, to Senate File 2361 as  
2 follows:

3 1. Page 1, by striking lines 10 through 23 and  
4 inserting the following:

5 "\_\_\_\_\_. By striking page 1, line 23, through page  
6 3, line 13, and inserting the following:

7 "7. a. "Gross revenues" means all consideration  
8 of any kind or nature including without limitation  
9 cash, credits, property, and in-kind contributions  
10 including services or goods derived by a holder of a  
11 certificate of franchise authority from the operation  
12 of the holder's network to provide cable service or  
13 video service within the municipality.

14 "Gross revenues" includes all consideration paid to  
15 a holder of a certificate of franchise authority and  
16 its affiliates to the extent either is acting as a  
17 provider of a cable service as authorized by this  
18 chapter, which shall include but not be limited to all  
19 of the following:

20 (1) All fees charged to subscribers for any and  
21 all cable service or video service provided by the  
22 holder of a certificate of franchise authority.

23 (2) Any fee imposed on the holder of a certificate  
24 of franchise authority by this chapter that is passed  
25 through and paid by subscribers including without  
26 limitation the franchise fee set forth in this  
27 chapter.

28 (3) Compensation received by the holder of a  
29 certificate of franchise authority or its affiliates  
30 that is derived from the operation of the holder of a  
31 certificate of franchise authority's network to  
32 provide cable service or video service with respect to  
33 commissions that are paid to the holder of a  
34 certificate of franchise authority as compensation for  
35 promotion or exhibition of any products or services on  
36 the holder of a certificate of franchise authority's  
37 network, such as a home shopping or a similar channel,  
38 subject to paragraph "b", subparagraph (5).

39 "Gross revenues" includes a pro rata portion of all  
40 revenue derived by the holder of a certificate of  
41 franchise authority or its affiliates pursuant to  
42 compensation arrangements for advertising derived from  
43 the operation of the holder of a state-issued  
44 certificate of franchise authority's network to  
45 provide cable service within a municipality, subject  
46 to paragraph "b", subparagraph (3). The pro rata  
47 portion shall be based on the number of subscribers in  
48 the municipality divided by the total number of  
49 subscribers in relation to the relevant regional or  
50 national compensation arrangement. Advertising

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1 commissions paid to third parties shall not be netted  
2 against advertising revenue included in gross  
3 revenues. Revenue of an affiliate derived from the  
4 affiliate's provision of cable service or video  
5 service shall be included in gross revenues to the  
6 extent the treatment of such revenue as revenue of the  
7 affiliate and not of the holder of a certificate of  
8 franchise authority would have the effect, whether  
9 intentional or unintentional, of evading the payment  
10 of fees which would otherwise be paid to the  
11 municipality. In no event shall revenue of an  
12 affiliate be gross revenue to the holder of a  
13 certificate of franchise authority if such revenue is  
14 otherwise subject to franchise fees to be paid to the  
15 municipality.

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

18 (1) Any revenue not actually received, even if  
19 billed, such as bad debt.

20 (2) Refunds, rebates, or discounts made to  
21 subscribers, leased access providers, advertisers, or  
22 a municipality.

23 (3) Any revenues from services classified as  
24 noncable service or nonvideo service under federal  
25 law.

26 (4) Any revenue paid by subscribers to home  
27 shopping programmers directly from the sale of  
28 merchandise through any home shopping channel offered  
29 as part of the cable services or video services, but  
30 not excluding any commissions that are paid to the  
31 holder of a certificate of franchise authority as  
32 compensation for promotion or exhibition of any  
33 products or services on the holder of a certificate of  
34 franchise authority's network, such as a home shopping  
35 or a similar channel.

36 (5) The sale of cable service or video service for  
37 resale in which the purchaser is required to collect  
38 fees required under this chapter from the purchaser's  
39 customer. Nothing under this subparagraph is intended  
40 to limit the rights of the state or a municipality  
41 pursuant to 47 U.S.C. § 542(h).

42 (6) The provision of cable service or video  
43 service to customers at no charge, as required or  
44 allowed by this chapter, including without limitation  
45 the provision of cable service or video service to  
46 public institutions, as required or permitted in this  
47 chapter, including without limitation public schools  
48 or governmental entities, as required or permitted by  
49 this chapter.

50 (7) Any tax of general applicability imposed upon

1 the holder of a certificate of franchise authority or  
2 upon subscribers by a city, state, federal, or any  
3 other governmental entity and required to be collected  
4 by the holder of a certificate of franchise authority  
5 and remitted to the taxing entity.

6 (8) Any foregone revenue from the holder of a  
7 certificate of franchise authority's provision of free  
8 or reduced cost cable service to any person including  
9 employees of the holder of a certificate of franchise  
10 authority, to the municipality, or to other public  
11 institutions or other institutions as allowed by this  
12 chapter; provided, however, that any foregone revenue  
13 which the holder of a certificate of franchise  
14 authority chooses not to receive in exchange for  
15 trades, barter, services, or other items of value  
16 shall be included in gross revenues.

17 (9) Sales of capital assets or sales of surplus  
18 equipment that is not used by the purchaser to receive  
19 cable service or video service from the holder of a  
20 certificate of franchise authority.

21 (10) Directory or internet advertising revenue  
22 including but not limited to yellow pages, white  
23 pages, banner advertisement, and electronic  
24 publishing."

25 \_\_\_\_\_. Page 3, by striking lines 18 through 23."

26 2. Page 4, by striking lines 16 through 23 and  
27 inserting the following:

28 "\_\_\_\_\_. Notwithstanding any other provision in this  
29 chapter, with respect to a franchise, or a certificate  
30 of franchise authority, a municipality shall have the  
31 right at any time during which there is more than one  
32 person providing cable service or video service in the  
33 jurisdiction of the municipality to increase the  
34 franchise fee as a percentage of gross revenues which  
35 persons providing cable service or video service in  
36 the municipality shall pay up to the maximum permitted  
37 by law. Any such increase shall be effective upon  
38 thirty days' notice to each such provider of cable  
39 service or video service."

40 \_\_\_\_\_. Page 11, by striking lines 18 through 23 and  
41 inserting the following:

42 "\_\_\_\_\_. Not more than once per year, a municipality  
43 may inspect and audit any books and records of each  
44 person providing cable service or video service in the  
45 jurisdiction of the municipality, and recompute any  
46 franchise fees determined to be payable. The provider  
47 of cable service or video service shall fully  
48 cooperate with the municipality in conducting such an  
49 audit. The cost of the audit shall be borne by the  
50 municipality, except that if the annual payment to the

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Page 4

1 municipality for the preceding year is increased by  
2 more than five percent as a result of the audit, the  
3 cost shall be borne by the provider of cable service  
4 or video service.""

5 3. By renumbering, relettering, redesignating,  
6 and correcting internal references as necessary.

**By** MIKE CONNOLLY

**S-5252** FILED MAY 2, 2006

Behn co-chair  
Warnstadt co-chair  
McKinley  
Zawn  
McCoy  
Courtney

SSB# 3146  
Commerce

SENATE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
COMMERCE BILL BY  
CO-CHAIRPERSONS BEHN AND  
WARNSTADT)

**Succeeded By**  
**SF/HF 2361**

Passed Senate, Date \_\_\_\_\_ Passed House, 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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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.

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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

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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

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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

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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.

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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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