

Senate Study Bill 3146

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
COMMERCE BILL BY
CO=CHAIRPERSONS BEHN AND
WARNSTADT)

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:
5 TLSB 5686SC 81
6 kk/je/5

PAG LIN

1 1 Section 1. NEW SECTION. 477A.1 DEFINITIONS.
1 2 As used in this chapter, unless the context otherwise
1 3 requires:
1 4 1. "Cable operator" means the same as defined in 47 U.S.C.
1 5 } 522.
1 6 2. "Cable service" means the same as defined in 47 U.S.C.
1 7 } 522.
1 8 3. "Cable system" means the same as defined in 47 U.S.C. }
1 9 522.
1 10 4. "Competitive cable service provider" means a person who
1 11 provides cable service over a cable system in an area other
1 12 than the incumbent cable operator providing service in the
1 13 same area.
1 14 5. "Competitive video service provider" means a person who
1 15 provides video service other than a cable operator.
1 16 6. "Franchise" means an initial authorization, or renewal
1 17 of an authorization, issued by the secretary of state or a
1 18 municipality, regardless of whether the authorization is
1 19 designated as a franchise, permit, license, resolution,
1 20 contract, certificate, agreement, or otherwise, that
1 21 authorizes the construction and operation of a cable system or
1 22 video service provider's network in a public right-of-way.
1 23 7. a. "Gross revenues" means all consideration of any
1 24 kind or nature, including but not limited to cash, credits,
1 25 property, and in-kind contributions received from subscribers
1 26 for the provision of cable service over a cable system by a
1 27 competitive cable provider or for the provision of video
1 28 service by a competitive video service provider within the
1 29 municipality's jurisdiction.
1 30 b. "Gross revenues" does not include any of the following:
1 31 (1) Revenues not actually received, even if billed,
1 32 including bad debt.
1 33 (2) Revenues received by any affiliate or any other person
1 34 in exchange for supplying goods or services used by the person
1 35 providing cable service or video service.
2 1 (3) Refunds, rebates, or discounts made to subscribers,
2 2 leased access providers, advertisers, or any municipality or
2 3 other unit of local government.
2 4 (4) Revenues from services not classified as cable service
2 5 or video service, including, without limitation, revenue
2 6 received from telecommunications services, revenue received
2 7 from information services, revenue received in connection with
2 8 advertising, revenue received in connection with home-shopping
2 9 services, or any other revenues attributed by the competitive
2 10 cable service provider or competitive video service provider
2 11 to noncable service or nonvideo service in accordance with any
2 12 applicable laws, rules, regulations, standards, or orders.
2 13 (5) Revenues paid by subscribers to home shopping
2 14 programmers directly from the sale of merchandise through any

2 15 home-shopping channel offered as part of the cable services or
2 16 video services.

2 17 (6) Revenues from the sale of cable services or video
2 18 services for resale in which the purchaser is required to
2 19 collect the five percent fee from the purchaser's customer.

2 20 (7) Revenues from any tax of general applicability imposed
2 21 upon the competitive cable service provider or competitive
2 22 video service provider or upon subscribers by a city, state,
2 23 federal, or any other governmental entity and required to be
2 24 collected by the competitive cable service provider or
2 25 competitive video service provider and remitted to the taxing
2 26 entity, including but not limited to sales or use tax, gross
2 27 receipts tax, excise tax, utility users tax, public service
2 28 tax, and communication taxes, and including the franchise fee
2 29 imposed under section 477A.8.

2 30 (8) Revenues forgone from the provision of cable services
2 31 or video services to public institutions, public schools, or
2 32 governmental entities at no charge.

2 33 (9) Revenues foregone from the competitive cable service
2 34 provider's or competitive video service provider's provision
2 35 of free or reduced-cost video service to any person,
3 1 including, without limitation, any municipality and other
3 2 public institutions or other institutions.

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

3 5 (11) Revenues from reimbursements by programmers of
3 6 marketing costs incurred by the competitive cable service
3 7 provider or competitive video service provider for the
3 8 introduction or promotion of new programming.

3 9 (12) Directory or internet advertising revenues including
3 10 but not limited to yellow page, white page, banner
3 11 advertisement, and electronic publishing.

3 12 (13) Copyright fees paid to the United States copyright
3 13 office.

3 14 8. "Incumbent cable provider" means the cable operator
3 15 serving the largest number of cable subscribers in a
3 16 particular franchise service area on July 1, 2006.

3 17 9. "Municipality" means a county or city.

3 18 10. "Percentage of gross revenues" means the percentage
3 19 set by the municipality and identified in a written request
3 20 made under section 477A.8, subsection 1, which shall be not
3 21 greater than the most recent percentage paid by the incumbent
3 22 cable provider as a franchise fee or five percent, whichever
3 23 is less.

3 24 11. "Public right-of-way" means the area on, below, or
3 25 above a public roadway, highway, street, bridge, cart way,
3 26 bicycle lane, or public sidewalk in which the municipality has
3 27 an interest, including other dedicated rights-of-way for
3 28 travel purposes and utility easements. "Public right-of-way"
3 29 does not include the airwaves above a public right-of-way with
3 30 regard to cellular or other nonwire telecommunications or
3 31 broadcast services or utility poles owned by a municipality or
3 32 a municipal utility.

3 33 12. "Video programming" means the same as defined in 47
3 34 U.S.C. } 522.

3 35 13. "Video service" means video programming services
4 1 provided through wireline facilities located at least in part
4 2 in the public right-of-way without regard to delivery
4 3 technology, including internet protocol technology. "Video
4 4 service" does not include any video programming provided by a
4 5 provider of commercial mobile service as defined in 47 U.S.C.
4 6 } 332, or cable service provided by an incumbent cable
4 7 provider or a competitive cable service provider.

4 8 Sec. 2. NEW SECTION. 477A.2 CERTIFICATE OF FRANCHISE
4 9 AUTHORITY REQUIREMENT.

4 10 1. Except as otherwise provided in this chapter, a person
4 11 providing cable service or video service in this state on or
4 12 after July 1, 2006, shall not provide such service without
4 13 obtaining a certificate of franchise authority issued by the
4 14 secretary of state.

4 15 2. A local exchange utility providing local telephone
4 16 service in this state and certified pursuant to section 476.29
4 17 that seeks to operate or operates as a competitive cable
4 18 service provider or competitive video service provider, or any
4 19 affiliate of such local exchange utility that seeks to operate
4 20 or operates as a competitive cable service provider or
4 21 competitive video service provider, shall be deemed to hold a
4 22 certificate of franchise authority issued by the secretary of
4 23 state upon the effective date of this Act. A local exchange
4 24 utility or an affiliate of a local exchange utility shall not
4 25 be required to apply for a certificate of franchise authority

4 26 pursuant to section 477A.3 except as required by rule.

4 27 3. a. A person providing cable service or video service
4 28 under a franchise agreement with a municipality prior to July
4 29 1, 2006, is not subject to this section with respect to such
4 30 municipality until the franchise agreement expires or is
4 31 terminated pursuant to paragraph "b".

4 32 b. A person providing cable service or video service that
4 33 is not the incumbent cable service provider and serves fewer
4 34 than forty percent of the total cable customers in a specific
4 35 municipality's franchise area may elect to terminate a
5 1 franchise agreement with the municipality and seek a
5 2 certificate of franchise authority from the secretary of state
5 3 by providing written notice to the secretary of state and the
5 4 affected municipality before January 1, 2007. The franchise
5 5 agreement with the municipality is terminated on the date the
5 6 secretary of state issues the certificate of franchise
5 7 authority to the person terminating the agreement. A person
5 8 providing cable service or video service who elects to
5 9 terminate a franchise agreement with a municipality under this
5 10 paragraph shall remit to the municipality within ninety days
5 11 after the date of termination any accrued but unpaid franchise
5 12 fees due under the terminated franchise agreement. If credit
5 13 remains from prepaid franchise fees under the franchise
5 14 agreement, the person providing cable service or video service
5 15 may deduct the amount of the remaining credit from any future
5 16 fees or taxes the person is required to pay to the
5 17 municipality under the franchise agreement.

5 18 4. For purposes of this section, a person providing cable
5 19 service or video service is deemed to have executed a
5 20 franchise agreement to provide cable service or video service
5 21 with a specific municipality if an affiliate or successor of
5 22 the person providing cable service or video service has
5 23 executed a franchise agreement with that municipality.

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

5 34 6. As used in this section, "affiliate" or "successor"
5 35 includes but is not limited to a person that directly, or
6 1 indirectly through one or more intermediaries, controls, is
6 2 controlled by, or is under common control with a person
6 3 receiving, obtaining, or operating under a franchise agreement
6 4 with a municipality to provide cable service or video service
6 5 through merger, sale, assignment, restructuring, or any other
6 6 type of transaction.

6 7 Sec. 3. NEW SECTION. 477A.3 APPLICATION REQUIREMENTS ==
6 8 CERTIFICATE OF FRANCHISE AUTHORITY.

6 9 1. The secretary of state shall issue a certificate of
6 10 franchise authority under this chapter after receipt of a
6 11 completed application and affidavit submitted by the applicant
6 12 and signed by an officer or general partner of the applicant.
6 13 The application and affidavit shall provide all of the
6 14 following information:

6 15 a. That the applicant has filed or will timely file with
6 16 the federal communications commission all forms required by
6 17 the commission in advance of offering cable service or video
6 18 service in this state.

6 19 b. That the applicant agrees to comply with all applicable
6 20 federal and state statutes, regulations, and rules.

6 21 c. That the applicant agrees to comply with all applicable
6 22 municipal ordinances and regulations regarding the use and
6 23 occupation of a public right-of-way in the delivery of the
6 24 cable service or video service, including the police powers of
6 25 the municipalities in which the service is delivered.

6 26 d. A description of the service area to be served and the
6 27 municipalities to be served by the applicant which may include
6 28 certain designations of unincorporated areas. This
6 29 description shall be updated by the applicant prior to the
6 30 expansion of cable service or video service to a previously
6 31 undesignated service area and, upon such expansion, notice
6 32 shall be given to the federal communications commission of the
6 33 service area to be served by the applicant.

6 34 e. The address of the applicant's principal place of
6 35 business and the names of the applicant's principal executive
7 1 officers.

7 2 2. The certificate of franchise authority issued by the
7 3 secretary of state shall contain all of the following:
7 4 a. A grant of authority to provide cable service or video
7 5 service in a specific service area and a description of the
7 6 service area.
7 7 b. A grant of authority to use and occupy the public
7 8 right-of-way in the delivery of cable service or video
7 9 service, subject to the laws of this state, including the
7 10 police powers of the municipalities in which the service is
7 11 delivered.
7 12 c. A statement that the grant of authority provided by the
7 13 certificate is subject to the lawful operation of the cable
7 14 service or video service by the applicant or the applicant's
7 15 successor.

7 16 3. A certificate of franchise authority issued by the
7 17 secretary of state is fully transferable to any successor of
7 18 the applicant to which the certificate was initially issued.
7 19 A notice of transfer shall be filed by the holder of the
7 20 certificate of franchise authority with the secretary of state
7 21 and the affected municipality within fourteen business days of
7 22 the completion of the transfer of the certificate of franchise
7 23 authority.

7 24 4. The certificate of franchise authority issued by the
7 25 secretary of state may be terminated by a person providing
7 26 cable service or video service by submitting written notice to
7 27 the secretary of state.

7 28 Sec. 4. NEW SECTION. 477A.4 APPLICABILITY TO FEDERAL
7 29 LAW.

7 30 To the extent required by applicable law, a certificate of
7 31 franchise authority issued under this chapter shall constitute
7 32 a "franchise" for the purposes of 47 U.S.C. } 541(b)(1). To
7 33 the extent required for the purposes of 47 U.S.C. } 521=561,
7 34 only the state of Iowa shall constitute the exclusive
7 35 franchising authority for competitive cable service providers
8 1 and competitive video service providers in this state.

8 2 Sec. 5. NEW SECTION. 477A.5 APPLICABILITY TO EXISTING
8 3 PROVIDERS.

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

8 15 All liens, security interests, royalties, and other
8 16 contracts, rights, and interests in effect on the effective
8 17 date of this Act, shall continue in full force and effect,
8 18 without the necessity for renewal, extension, or continuance,
8 19 and shall be paid and performed by the holder of a certificate
8 20 of franchise authority, and shall apply as though the revenues
8 21 generated by the holder of a certificate of franchise
8 22 authority continued to be generated pursuant to the permit or
8 23 franchise issued by the prior local franchising authority or
8 24 municipality within the service area to which the prior permit
8 25 or franchise applies.

8 26 It shall be a condition to the issuance and continuance of
8 27 a certificate of franchise authority that the private
8 28 contractual rights and obligations herein described continue
8 29 to be honored, paid, or performed to the same extent as though
8 30 the cable service provider continued to operate under its
8 31 prior franchise agreement, for the duration of the certificate
8 32 of franchise authority and any renewals or extensions of the
8 33 prior franchise agreement, and that the applicant so agrees.

8 34 Any person holding or claiming rights herein reserved may
8 35 enforce the rights by an action brought in a court of
9 1 competent jurisdiction.

9 2 Sec. 6. NEW SECTION. 477A.6 MUNICIPALITY RESTRICTIONS.

9 3 1. A municipality shall not require a holder of a
9 4 certificate of franchise authority to do any of the following:

9 5 a. Comply with a mandatory build-out provision.
9 6 b. Obtain a separate franchise.
9 7 c. Pay any additional fees, except as provided in this
9 8 chapter.

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

9 11 2. For purposes of this section, a "franchise requirement"
9 12 includes any provision regulating rates or requiring build-out

9 13 requirements to deploy any facilities or equipment.
9 14 3. Section 364.2 and section 364.3, subsection 7, shall
9 15 not apply to a holder of a certificate of franchise authority
9 16 issued pursuant to this chapter.

9 17 Sec. 7. NEW SECTION. 477A.7 PUBLIC, EDUCATIONAL, AND
9 18 GOVERNMENT ACCESS CHANNELS.

9 19 1. Not later than one hundred eighty days after a request
9 20 by a municipality in which a competitive cable service
9 21 provider or a competitive video service provider is providing
9 22 cable service or video service, the holder of the certificate
9 23 of authority for that municipality shall designate a
9 24 sufficient amount of capacity on the certificate holder's
9 25 communications network to allow the provision of a comparable
9 26 number of channels or capacity for the municipality to provide
9 27 public, educational, and governmental noncommercial
9 28 programming by the competitive cable service provider or
9 29 competitive video service provider.

9 30 a. The public, educational, and governmental content to be
9 31 provided pursuant to this section shall be the responsibility
9 32 of the municipality receiving the benefit of such capacity.
9 33 The holder of a certificate of franchise authority shall be
9 34 responsible only for the transmission of such content, subject
9 35 to technological restraints.

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

10 15 2. Where technically feasible, a competitive cable service
10 16 provider or competitive video service provider that is a
10 17 holder of a certificate of franchise authority and an
10 18 incumbent cable service provider shall use reasonable efforts
10 19 to interconnect the cable or video communications network
10 20 systems of the certificate holder and incumbent cable service
10 21 provider for the purpose of providing public, educational, and
10 22 government programming. Interconnection may be accomplished
10 23 by direct cable, microwave link, satellite, or other
10 24 reasonable method of connection. A holder of a certificate of
10 25 franchise authority and an incumbent cable service provider
10 26 shall negotiate in good faith and an incumbent cable service
10 27 provider shall not withhold interconnection of public,
10 28 educational, or government channels.

10 29 3. A court of competent jurisdiction shall have exclusive
10 30 jurisdiction to enforce any requirement under this section.

10 31 Sec. 8. NEW SECTION. 477A.8 FEES.

10 32 1. a. In any service area in which a competitive cable
10 33 service provider or a competitive video service provider
10 34 holding a certificate of franchise authority offers or
10 35 provides cable service or video service, the competitive cable
11 1 service provider or competitive video service provider shall
11 2 calculate and pay a franchise fee to the municipality with
11 3 authority to grant a certificate of franchise authority in
11 4 that service area upon the municipality's written request. If
11 5 the municipality makes such a request, the franchise fee shall
11 6 be due on a quarterly basis, not later than forty-five days
11 7 after the close of the quarter, and shall be calculated as a
11 8 percentage of gross revenues. The municipality shall not
11 9 demand any additional franchise fees from the competitive
11 10 cable service provider or competitive video service provider,
11 11 and shall not demand the use of any other calculation method
11 12 for the franchise fee.

11 13 b. A provider who is both a competitive cable service
11 14 provider and a competitive video service provider shall be
11 15 subject to and only be required to pay one franchise fee to a
11 16 municipality under this subsection regardless of whether the
11 17 provider provides both cable service and video service.

11 18 c. At the request of a municipality and not more than once
11 19 per year, the auditor of state may perform reasonable audits
11 20 of the competitive cable service provider's or competitive
11 21 video service provider's calculation of the franchise fee
11 22 under this subsection. The municipality shall bear the costs
11 23 of any audit requested pursuant to this subsection.

11 24 d. A competitive cable service provider or competitive
11 25 video service provider may identify and collect the amount of
11 26 the franchise fee as a separate line item on the regular bill
11 27 of each subscriber.

11 28 2. A municipality may require a competitive cable service
11 29 provider or competitive video service provider to pay a permit
11 30 fee if the municipality imposes the same permit fee on the
11 31 incumbent cable provider, and any permit fee shall not exceed
11 32 the actual, direct costs incurred by the municipality for
11 33 issuing the relevant permit. In no event may a permit fee
11 34 under this subsection be levied under any of the following
11 35 circumstances:

12 1 a. If the competitive cable service provider or
12 2 competitive video service provider already has paid a permit
12 3 fee of any kind in connection with the same activity that
12 4 would otherwise be covered by the permit fee under this
12 5 subsection or is otherwise authorized by law or contract to
12 6 place the facilities used by the competitive cable service
12 7 provider or competitive video service provider in the public
12 8 right-of-way.

12 9 b. For general revenue purposes.

12 10 Sec. 9. NEW SECTION. 477A.9 NONDISCRIMINATION BY
12 11 MUNICIPALITY.

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

12 18 2. A municipality shall not discriminate against the
12 19 holder of a certificate of franchise authority in providing
12 20 access to a municipal building or through a municipal utility
12 21 pole attachment term.

12 22 Sec. 10. NEW SECTION. 477A.10 PROVIDER DISCRIMINATION
12 23 PROHIBITED.

12 24 1. The purpose of this section is to prevent
12 25 discrimination among potential residential subscribers.

12 26 2. A competitive cable service provider or competitive
12 27 video service provider holding a certificate of franchise
12 28 authority shall not deny access to any group of potential
12 29 residential subscribers because of the income of residents in
12 30 the local area in which such group resides.

12 31 3. The holder of a certificate of franchise authority may
12 32 use direct-to-home satellite service or another alternative
12 33 technology that provides comparable content, service, and
12 34 functionality to satisfy the requirements of this section.

12 35 Sec. 11. NEW SECTION. 477A.11 APPLICABILITY OF OTHER
13 1 LAW.

13 2 1. This chapter is intended to be consistent with the
13 3 federal Cable Act, 47 U.S.C. } 521 et seq.

13 4 2. Except as otherwise stated in this chapter, this
13 5 chapter shall not be interpreted to prevent a competitive
13 6 cable service provider, competitive video service provider,
13 7 municipality, or other provider of cable service or video
13 8 service from seeking clarification of any rights and
13 9 obligations under federal law or to exercise any right or
13 10 authority under federal or state law.

13 11 Sec. 12. NEW SECTION. 477A.12 RULES.

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

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

13 16 EXPLANATION

13 17 This bill relates to franchises for the provision of cable
13 18 service or video service.

13 19 Under current law, each city has the authority to grant a
13 20 franchise for the provision of cable television service under
13 21 Code section 364.2. This bill requires a person providing
13 22 cable service or video service, as defined by the bill, to
13 23 apply for and receive a certificate of franchise authority
13 24 from the secretary of state to provide cable service or video
13 25 service in the service area listed on the certificate of
13 26 franchise authority. Persons providing cable service or video
13 27 service under a franchise agreement with a municipality prior
13 28 to July 1, 2006, are not required to apply for a certificate
13 29 of franchise authority until the franchise agreement expires
13 30 or is terminated as provided by the bill. A local exchange
13 31 utility with a certificate of convenience that provides local
13 32 telephone service operating or seeking to operate as a
13 33 competitive cable service provider or competitive video
13 34 service provider shall be deemed to hold a certificate of

13 35 franchise authority upon the effective date of the bill. A
14 1 competitive cable service provider or competitive video
14 2 service provider shall provide notice to each municipality in
14 3 the service area granted under the certificate of franchising
14 4 authority that the provider offers or intends to offer cable
14 5 service or video service.

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

14 23 The bill provides that a certificate of franchise authority
14 24 shall be considered a "franchise" within the meaning of
14 25 certain federal laws and that only the state of Iowa shall be
14 26 considered the franchising authority for competitive cable
14 27 service providers and competitive video service providers in
14 28 this state.

14 29 The bill provides that there is not an intent under new
14 30 Code chapter 477A to adversely affect the contractual rights,
14 31 duties, and existing obligations of persons providing cable
14 32 service or video service.

14 33 The bill prohibits municipalities from requiring a holder
14 34 of a certificate of franchise authority to comply with
14 35 mandatory build-out provisions, obtain a separate franchise,
15 1 pay additional fees other than as provided in the bill, and
15 2 comply with additional franchise requirements other than as
15 3 provided in the bill. The bill provides that Code section
15 4 364.2, relating to the powers of cities to grant franchises,
15 5 and Code section 364.3, subsection 7, relating to city=
15 6 operated cable service systems, shall not apply to a holder of
15 7 a certificate of franchise authority.

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

15 20 The bill requires a competitive cable service provider and
15 21 a competitive video service provider to calculate and pay a
15 22 franchise fee to a municipality in which the provider is
15 23 offering cable service or video service. The franchise fee
15 24 must be requested by the municipality and paid not later than
15 25 45 days after each quarter. The franchise fee shall be
15 26 calculated as a percentage of gross revenues which shall be a
15 27 percentage set by the municipality not to exceed the
15 28 percentage paid by the incumbent cable provider or five
15 29 percent of gross revenues, whichever is less. The bill
15 30 provides a definition of "gross revenues". The municipality
15 31 may not demand any additional franchise fees or another method
15 32 of calculation of the franchise fee. The municipality may
15 33 only charge one franchise fee per competitive provider
15 34 regardless of whether the provider provides both cable service
15 35 and video service. The municipality may charge a permit fee
16 1 to a competitive cable service provider or competitive video
16 2 service provider if the municipality imposes the same fee on
16 3 the incumbent cable provider of the municipality.

16 4 The bill provides for nondiscrimination with respect to
16 5 holders of certificates of franchise authority by a
16 6 municipality regarding the installation, construction, and
16 7 maintenance of a communications network in the municipality's
16 8 right-of-way. The municipality cannot discriminate against a
16 9 holder of a certificate of authority regarding access to a
16 10 building and a municipal utility pole attachment term.

16 11 The bill prohibits a competitive cable service provider and
16 12 competitive video service provider with a certificate of
16 13 franchise authority from denying access to the provider's
16 14 services to any group of potential residential subscribers due
16 15 to the residents' income.
16 16 The bill contains a general applicability clause for
16 17 consistency with the federal Cable Act. The bill provides
16 18 authority for the secretary of state to adopt rules necessary
16 19 to administer new Code chapter 477A.
16 20 The bill is effective upon enactment.
16 21 LSB 5686SC 81
16 22 kk:rj/je/5