

AN ACT

To amend section 153.64, to enact sections 1332.21, 1332.22, 1332.23, 1332.24, 1332.25, 1332.26, 1332.27, 1332.28, 1332.29, 1332.30, 1332.31, 1332.32, 1332.33, and 1332.34, and to repeal sections 505.90, 505.91, and 505.92 of the Revised Code to provide for the issuance of video service authorizations by the Director of Commerce.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 153.64 be amended and sections 1332.21, 1332.22, 1332.23, 1332.24, 1332.25, 1332.26, 1332.27, 1332.28, 1332.29, 1332.30, 1332.31, 1332.32, 1332.33, and 1332.34 of the Revised Code be enacted to read as follows:

Sec. 153.64. (A) As used in this section:

(1) "Public improvement" means any construction, reconstruction, improvement, enlargement, alteration, or repair of a building, highway, drainage system, water system, road, street, alley, sewer, ditch, sewage disposal plant, water works, and all other structures or works of any nature by a public authority.

(2) "Public authority" includes the state, or a county, township, municipal corporation, school district, or other political subdivision, or any public agency, authority, board, commission, instrumentality, or special district of or in the state or a county, township, municipal corporation, school district, or other political subdivision.

(3) "Underground utility facilities" includes any item buried or placed below ground or submerged under water for use in connection with the storage or conveyance of water or sewage; or electronic, telephonic, or telegraphic communications; electricity; electric energy; petroleum products; manufactured, mixed, or natural gas; synthetic or liquified natural gas; propane gas; or other substances. "Underground utility facilities" includes, but is not limited to, all operational underground pipes, sewers, tubing, conduits, cables, valves, lines, wires, manholes, and attachments,

whether owned by any public or private or profit or nonprofit person, firm, partnership, company, corporation, joint stock association, joint venture, or voluntary association, wherever organized or incorporated, except for a private septic system in a single- or double-family dwelling utilized only for that dwelling and not connected to any other system.

(4) "Underground utility protection service" means a notification center not an owner of an underground utility facility, existing for the purpose of receiving notice from public authorities and from other persons that plan to prepare plans and specifications for, or engage in, public improvements involving digging, blasting, excavating, or other underground construction activities and distributing this information to its members. "Registered underground utility protection service" means an underground utility protection service registered with the secretary of state and the public utilities commission of Ohio pursuant to division (F) of this section.

(5) "Owner of underground utility facility" does not include telephone companies classified as medium or small under rule 4901-7-01 of the Ohio Administrative Code, owners of pipelines that conduct liquid petroleum products, or cable television companies ~~as defined in division (B) of section 505.90 of the Revised Code~~ to the extent that it requires membership in an underground utility protection service.

(6) "Construction area" means the area delineated on the plans and specifications for the public improvement within which the work provided for in the contract will be performed.

(B) In any public improvement which may involve underground utility facilities, the public authority, prior to preparing plans and specifications, shall contact the registered underground utility protection services and the owners of underground utility facilities that are not members of a registered underground utility protection service for the existence and location of all underground utility facilities within the construction area. The public authority shall include, in the plans and specifications for such improvement, the identity and location of the existing underground utility facilities located in the construction area as provided to the public authority by the owner of the underground utility facility and the name, address, and telephone number of each owner of any underground utility facilities in the construction area that does not subscribe to a registered underground utility protection service. Any anticipated temporary or permanent relocation of underground utility facilities deemed necessary by the public authority shall be negotiated or arranged by the public authority with the owners of the underground utility facilities prior to the start of construction. If a temporary or permanent relocation of utility facilities is necessary, the owner of the

underground utility facility shall be given a reasonable time to move such utility facilities unless the contractor to whom the contract for a public improvement is awarded or its subcontractor agrees with the owner of the underground utility facility to coordinate relocation with construction operations. The public authority, within ten calendar days after award of a contract for a public improvement, shall notify in writing all owners of underground utility facilities known to be located in the construction area of the public improvement of the name and address of the contractor to whom the contract for the public improvement was awarded. Where notice is given in writing by certified mail, the return receipt, signed by any person to whom the notice is delivered, shall be conclusive proof of notice.

(C) The contractor to whom a contract for a public improvement is awarded or its subcontractor, at least two working days, excluding Saturdays, Sundays, and legal holidays, prior to commencing construction operations in the construction area which may involve underground utility facilities, shall cause notice to be given to the registered underground utility protection services and the owners of underground utility facilities shown on the plans and specifications who are not members of a registered underground utility protection service, in writing, by telephone, or in person. Where notice is given in writing by certified mail, the return receipt, signed by any person to whom the notice is delivered, shall be conclusive proof of notice. The owner of the underground utility facility, within forty-eight hours, excluding Saturdays, Sundays, and legal holidays, after notice is received, shall stake, mark, or otherwise designate the location of the underground utility facilities in the construction area in such a manner as to indicate their course together with the approximate depth at which they were installed. The marking or locating shall be coordinated to stay approximately two days ahead of the planned construction.

(D) If the public authority fails to comply with the requirements of division (B) of this section, the contractor to whom the work is awarded or its subcontractor complies with the requirements of division (C) of this section, and the contractor or its subcontractor encounters underground utility facilities in the construction area that would have been shown on the plans and specifications for such improvement had the registered underground utility protection service or owner of the underground utility facility who is not a member of a registered underground utility protection service whose name, address, and telephone number is provided by the public authority been contacted, then the contractor, upon notification to the public authority, is entitled to an increase to the contract price for itself or its subcontractor for any additional work that must be undertaken or additional

time that will be required and is entitled to an extension of the completion date of the contract for the period of time of any delays to the construction of the public improvement.

In the event of a dispute as to the application of this section, procedures may be commenced under the applicable terms of the construction contract, or if the contract contains no provision for final resolution of the dispute, pursuant to the procedures for arbitration in Chapter 2711. of the Revised Code.

This section does not affect rights between the contractors and the public authority for any increase in contract price or additional time to perform the contract when the public authority complies with division (B) of this section.

Any public authority who complies with the requirements of division (B) of this section and any contractor or its subcontractor who complies with the requirements of division (C) of this section shall not be responsible to the owner of the underground utility facility if underground utility lines are encountered not as marked in accordance with the provisions of division (C) of this section by the owner of the underground utility facility, unless the contractor or its subcontractor has actual notice of the underground utility facility. Except as noted in this division, this section does not affect rights between the contractor or its subcontractor and the owner of the underground utility facility for failure to mark or erroneously marking utility lines. The public authority shall not make as a requirement of any contract for public improvement any change in responsibilities between the public authority and the owners of the underground utility facilities in connection with damage, injury, or loss to any property in connection with underground utility facilities.

The contractor or its subcontractor shall alert immediately the occupants of nearby premises as to any emergency that ~~he~~ the contractor or subcontractor may create or discover at or near such premises. The contractor or its subcontractor shall report immediately to the owner or operator of the underground facility any break or leak on its lines or any dent, gouge, groove, or other damage to such lines or to their coating or cathodic protection, made or discovered in the course of their excavation.

(E) This section does not affect rights between the public authority and the owners of the underground utility facilities for responsibility for costs involving removal, relocation, or protection of existing underground utility facilities, or for costs for delays occasioned thereby.

(F) An underground utility protection service shall register with the secretary of state and the public utilities commission of Ohio, identifying its

name, address, telephone number, membership, and other pertinent information. The secretary of state and commission shall establish procedures for accepting such registrations and providing information about registrants to public authorities on request.

Sec. 1332.21. As used in sections 1332.21 to 1332.34 of the Revised Code:

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

(B) "Basic local exchange service" has the same meaning as in section 4927.01 of the Revised Code.

(C) "Cable operator," "cable service," "cable system," "franchise," and "franchising authority" have the same meanings as in the "Cable Communications Policy Act of 1984," Pub. L. No. 98-549, 98 Stat. 2780, 2781, 47 U.S.C. 522, as amended by the "Telecommunications Act of 1996," Pub. L. No. 104-104, 110 Stat. 56.

(D) "Competitive video service agreement" means any agreement, memorandum of understanding, or other document that provides or has the effect of providing, whether or not as a franchise, authorization by a municipal corporation or township for the provision of video service within its boundaries by a person using telecommunications facilities to provide that service.

(E) "Household" means, consistent with the regulations of the bureau of the census of the United States department of commerce, a house, an apartment, a mobile home, a group of rooms, or a single room that is intended for occupancy as separate living quarters. "Separate living quarters" are those in which the occupants live and eat separately from any other persons in the building and that have direct access from the outside of the building or through a common hall.

(F) "Low-income households" means those residential households that are located within the video service provider's video service area and have an average annual household income of less than thirty-five thousand dollars based on United States census bureau estimates on January 1, 2007.

(G) "PEG channel" means a channel, for public, educational, and governmental programming, made available by a video service provider or cable operator for noncommercial use.

(H) "Telecommunications service" has the same meaning as in the "Telecommunications Act of 1996," Pub. L. No. 104-104, Title I, Section 3, 110 Stat. 60, 47 U.S.C. 153.

(I) "Video programming" has the same meaning as in the "Cable Communications Policy Act of 1984," Pub. L. No. 98-549, 98 Stat. 2781, 47 U.S.C. 522.

(J) "Video service" means the provision of video programming over wires or cables located at least in part in public rights-of-way, regardless of the technology used to deliver that programming, including internet protocol technology or any other technology. The term includes cable service, but excludes video programming provided to persons in their capacity as subscribers to commercial mobile service as defined in the "Telecommunications Act of 1996," Pub. L. No. 104-104, Title VII, Sections 704(a) and 705, 110 Stat. 61, 151, 153, 47 U.S.C. 332; video programming provided solely as part of and via a service that enables users to access content, information, electronic mail, or other services offered over the public internet; and signals distributed by a cable television system to paying subscribers in the unincorporated area of a township prior to October 1, 1979, as authorized under section 505.91 of the Revised Code as that section existed prior to its repeal by S.B. 117 of the 127th general assembly, unless a franchise was subsequently issued to the same company as authorized under that section.

(K) "Video service area" means the service area specified pursuant to divisions (A) and (B) of section 1332.25 of the Revised Code.

(L) "Video service network" means wires or cables and associated facilities or components used to deliver video service and includes a cable system.

(M) "Video service provider" means a person granted a video service authorization under sections 1332.21 to 1332.34 of the Revised Code.

Sec. 1332.22. The general assembly finds and declares all of the following for the purposes of sections 1332.21 to 1332.34 of the Revised Code:

(A) Video service brings significant daily benefits to this state by providing news, education, and entertainment.

(B) This state's economy will be enhanced by investment in new communications and video programming infrastructure, including fiber optic and internet protocol technologies.

(C) Enhancing the existing broadband infrastructure and increasing consumer access to robust and reliable broadband products and services are important, statewide concerns.

(D) To date, there has been only minimal competitive entry by telephone companies into the facilities-based video programming market in this state, in part, because local franchise requirements may present barriers

to entry.

(E) Increased competition in the provision of video service will provide new and more video programming choices for consumers in this state, and new providers have stated their desire to supply that service.

(F) The time-to-market interval is critical for new entrants seeking to compete with incumbents.

(G) Local franchise and other requirements may present inordinate delays for new entrants.

(H) This state can and should provide a uniform regulatory framework by which persons can rapidly and expeditiously provide video service to residents of this state regardless of their jurisdictional locations, which framework will promote rapid competitive entry into the video service market and encourage additional, significant infrastructure investment.

(I) Maintaining an existing franchise in cases where new entrants obtain video service authorizations is not appropriate unless the incumbent chooses to maintain that franchise.

(J) The continued development of Ohio's video service market and promotion of infrastructure investment are matters of statewide concern and are properly subject to exercises of this state's police power.

(K) By analogy to *Am. Financial Servs. Assn. et al. v. Cleveland*, 112 Ohio St. 3d 170, 2006-Ohio-6043, citing *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, syllabus, sections 1332.21 to 1332.34 of the Revised Code are intended as a comprehensive legislative enactment operating uniformly throughout this state, setting forth police regulations, and prescribing a rule of conduct upon citizens generally.

Sec. 1332.23. (A) Except as otherwise provided in divisions (B)(1) and (2) of this section, no person shall provide video service in this state on or after the effective date of this section except pursuant to a video service authorization issued under section 1332.24 of the Revised Code. Nothing in sections 1332.21 to 1332.34 of the Revised Code equates authority to construct and operate telecommunications facilities in a public right-of-way to authority to provide access to video service.

(B)(1)(a) Subject to division (B)(2) of this section, a person that offers service under a franchise or competitive video service agreement in effect on the effective date of this section may continue on and after that date to provide service within the franchise area or the respective municipal corporation or unincorporated area of a township pursuant to the terms and conditions of the franchise or agreement. However, no such franchise or agreement shall be renewed or extended beyond the existing term of the franchise or agreement or its earlier termination pursuant to the terms and

conditions of the franchise or agreement. With respect to such a franchise or competitive video service agreement but only for the time the franchise or agreement is in effect as provided under divisions (B)(1)(a) and (2) of this section, the authority of a township under sections 505.90 to 505.92 of the Revised Code, as those sections existed on the day before their repeal by Am. Sub. S.B. 117 of the 127th General Assembly, shall continue, notwithstanding their repeal by that act.

(b) Any person that is providing video service in this state on the effective date of this section pursuant to the terms and conditions of an expired franchise or competitive video service agreement, or is otherwise providing video service on that date other than as described in division (B)(1)(a) of this section, has ninety days beginning on the effective date of this section to file an application for a video service authorization under section 1332.25 of the Revised Code.

(2) A person that offers service under a franchise or competitive video service agreement pursuant to division (B)(1)(a) of this section may apply, under any of the following circumstances, under section 1332.25 of the Revised Code for a video service authorization to provide video service within an area served by its video service network on the effective date of this section under that franchise or agreement:

(a) Not sooner than one hundred twenty days before the expiration or termination of the person's franchise or competitive video service agreement for that area in accordance with its terms and conditions;

(b) After any other person provides or sells video service in that area;

(c) After receiving notice pursuant to division (A) of section 1332.27 of the Revised Code;

(d) After a determination by the federal communications commission under 47 C.F.R. 76.907 that the person is subject in that area to effective competition as defined in 47 C.F.R. 76.905(b).

Upon the effective date of a video service authorization obtained by the person under division (B)(2) of this section, the franchise or competitive video service agreement terminates, and no provision of that franchise or agreement is enforceable.

(C) Video service constitutes cable service over a cable system for the purposes of sections 1332.01 to 1332.10 of the Revised Code. For purposes of division (B)(4) of section 4939.05 and divisions (A)(3) and (D)(2) of section 4939.08 of the Revised Code, a municipal corporation that receives a video service provider fee described in section 1332.32 of the Revised Code constitutes a municipal corporation that charges a franchise fee, and a video service authorization described in section 1332.24 of the Revised Code

constitutes a franchise between a cable operator and a municipal corporation.

Sec. 1332.24. (A)(1) In accordance with section 1332.25 of the Revised Code, the director of commerce may issue to any person, or renew, a video service authorization, which authorization confers on the person the authority, subject to sections 1332.21 to 1332.34 of the Revised Code, to provide video service in its video service area; construct and operate a video service network in, along, across, or on public rights-of-way for the provision of video service; and, when necessary to provide that service, exercise the power of a telegraph company under section 4931.04 of the Revised Code. The term of a video service authorization or authorization renewal shall be ten years.

(2) For the purposes of the "Cable Communications Policy Act of 1984," Pub. L. No. 98-549, 98 Stat. 2779, 47 U.S.C. 521 et seq., a video service authorization shall constitute a franchise under that law, and the director shall be the sole franchising authority under that law for video service authorizations in this state.

(B)(1) The director may investigate alleged violations of or failures to comply with division (A) of section 1332.23, division (C) of section 1332.25, division (C) or (D) of section 1332.26, division (A), (B), or (C) of section 1332.27, division (A) of section 1332.28, division (A) or (B) of section 1332.29, or section 1332.30 or 1332.31 of the Revised Code, or complaints concerning any such violation or failure. Except as provided in this section, the director has no authority to regulate video service in this state, including, but not limited to, the rates, terms, or conditions of that service.

(2) In conducting an investigation under division (B)(1) of this section, the director, by subpoena, may compel witnesses to testify in relation to any matter over which the director has jurisdiction and may require the production of any book, record, or other document pertaining to that matter. If a person fails to file any statement or report, obey any subpoena, give testimony, produce any book, record, or other document as required by a subpoena, or permit photocopying of any book, record, or other document subpoenaed, the court of common pleas of any county in this state, upon application made to it by the director, shall compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from the court or a refusal to testify.

(C)(1) If the director finds that a person has violated or failed to comply with division (A) of section 1332.23, division (C) of section 1332.25, division (C) or (D) of section 1332.26, division (A), (B), or (C) of section

1332.27, division (A) of section 1332.28, division (A) or (B) of section 1332.29, or section 1332.30 or 1332.31 of the Revised Code, and the person has failed to cure the violation or failure after reasonable, written notice and reasonable time to cure, the director may do any of the following:

(a) Apply to the court of common pleas of any county in this state for an order enjoining the activity or requiring compliance. Such an action shall be commenced not later than three years after the date the alleged violation or failure occurred or was reasonably discovered. Upon a showing by the director that the person has engaged in a violation or failure to comply, the court shall grant an injunction, restraining order, or other appropriate relief.

(b) Enter into a written assurance of voluntary compliance with the person;

(c) Pursuant to an adjudication under Chapter 119. of the Revised Code, assess a civil penalty in an amount determined by the director, including for any failure to comply with an assurance of voluntary compliance under division (C)(1)(b) of this section. The amount shall be not more than one thousand dollars for each day of violation or noncompliance, not to exceed a total of ten thousand dollars, counting all subscriber impacts as a single violation or act of noncompliance. In determining whether a civil penalty is appropriate under division (C)(1)(c) of this section, the director shall consider all of the following factors:

- (i) The seriousness of the noncompliance;
- (ii) The good faith efforts of the person to comply;
- (iii) The person's history of noncompliance;
- (iv) The financial resources of the person;
- (v) Any other matter that justice requires.

Civil penalties collected pursuant to division (C)(1)(c) of this section shall be deposited to the credit of the video service enforcement fund in the state treasury, which is hereby created, to be used by the department of commerce in carrying out its duties under this section.

(2) Pursuant to an adjudication under Chapter 119. of the Revised Code, the director may revoke, in whole or in part, the video service authorization of any person that has repeatedly and knowingly violated or failed to comply with division (A) of section 1332.23, division (C) of section 1332.25, division (C) or (D) of section 1332.26, division (A), (B), or (C) of section 1332.27, division (A) of section 1332.28, division (A) or (B) of section 1332.29, or section 1332.30 or 1332.31 of the Revised Code and that has failed to cure the violations or noncompliances after reasonable written notice and reasonable time to cure. Such person acts knowingly, regardless of the person's purpose, when the person is aware that the person's conduct

will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist.

(3) The court shall conduct a de novo review in any appeal from an adjudication under division (C)(1)(c) or (C)(2) of this section.

(D) The public utilities commission has no authority over a video service provider in its offering of video service or a cable operator in its offering of cable or video service, or over any person in its offering of video service pursuant to a competitive video service agreement.

Sec. 1332.25. (A) An application made to the director of commerce for a video service authorization under section 1332.24 of the Revised Code shall require and contain only the following:

(1) Specification of the location of the applicant's principal place of business and the names of the applicant's principal executive officers;

(2) Specification of the geographic and political boundaries of the applicant's proposed video service area;

(3) A general description of the type or types of technologies the applicant will use to deliver the video programming, which may include wireline, wireless, or any other alternative technology, subject, as applicable, to section 1332.29 of the Revised Code;

(4) An attestation that the applicant has filed or will timely file with the federal communications commission all forms required by that agency in advance of offering video service in this state;

(5) An attestation that the applicant will comply with applicable federal, state, and local laws;

(6) An attestation that the applicant is legally, financially, and technically qualified to provide video service;

(7) A description of the applicant's customer complaint handling process, including policies on addressing customer service issues, billing adjustments, and communication with government officials regarding customer complaints, and a local or toll-free telephone number at which a customer may contact the applicant.

(B) For the purpose of division (A)(2) of this section:

(1) The video service areas of video service providers may overlap.

(2) A specified video service area shall be coextensive with municipal, township unincorporated area, or county boundaries, except as authorized under division (B)(3) or (4) of this section, but nothing in sections 1332.21 to 1332.34 of the Revised Code shall require a video service provider to provide access to video service within the entire video service area.

(3) The specified video service area of a person using

telecommunications facilities to provide video service on the effective date of this section or of any other person later so using telecommunications facilities shall be the geographic area in which the person offers basic local exchange service.

(4) Subject to division (C)(2) of section 1332.27 of the Revised Code, the specified video service area of an applicant cable operator that offers service under a franchise in effect on the effective date of this section initially shall be, at minimum, the franchise area established under that franchise.

(C) A video service provider shall immediately file an application to amend its video service authorization with the director to reflect any change in the information required under division (A)(1), (2), or (3) of this section. An amendment pursuant to division (A)(2) of this section shall include any new delivery technology information required by division (A)(3) of this section.

(D) Within thirty days after its filing or within thirty days after the filing of supplemental information necessary to make it complete, the director shall determine the completeness of an application filed under division (A) or (C) of this section relative to the respective requirements of divisions (A), (B), and (C) of this section and, as applicable, shall notify the applicant of an incompleteness determination, state the bases for that determination, and inform the applicant that it may resubmit a corrected application. The director shall issue a video service authorization, authorization renewal, or amended authorization within fifteen days after the director's determination that the filed application is complete.

If the director does not notify the applicant regarding the completeness of the application within the time period specified in this division or does not issue the authorization requested by a completed application within the applicable time period, the application shall be deemed complete, and the authorization or amended authorization deemed issued on the forty-fifth day after the application's filing date.

(E) An applicant shall pay a two thousand dollar nonrefundable fee for each application filed under division (A) of this section and a one hundred dollar nonrefundable fee for each application to amend filed under division (C) of this section. Fees collected under this division shall be deposited to the credit of the video service authorization fund in the state treasury, which is hereby created, to be used by the department of commerce in carrying out its duties under this section.

(F) No video service provider shall identify or make reference to an application fee under division (E) of this section on any subscriber bill or in

conjunction with charging any fee to the subscriber.

(G) An applicant may identify any information in its application as trade secret information, and if, upon its written request to the director, the director reasonably affirms all or part of that information as trade secret information, the information so affirmed does not constitute a public record for the purpose of section 149.43 of the Revised Code.

Sec. 1332.26. (A) No political subdivision shall require a video service provider to obtain from it any authority to provide video service within its boundaries.

(B) Except as authorized under division (C) of this section and under sections 1332.30 and 1332.32 of the Revised Code, no political subdivision shall request anything of value from a video service provider for providing video service; impose any fee, license, or gross receipt tax on the provision of video service by such a provider; or impose any franchise or other requirement on the provision of video service by a video service provider, including, but not limited to, any provision regulating rates charged by a video service provider or establishing any build-out requirement or requirement to deploy any facility or equipment.

(C) When requested to do so, a video service provider shall assist a municipal corporation or township in addressing video service subscriber complaints, in a manner consistent with the provider's complaint handling process set forth in its application pursuant to division (A)(7) of section 1332.24 of the Revised Code. Nothing in sections 1332.21 to 1332.34 of the Revised Code affects any authority granted under sections 1345.01 to 1345.13 of the Revised Code.

(D) A video service provider shall meet all of the following customer service standards:

(1) The provider shall restore video service within seventy-two hours after a subscriber reports a service interruption or other problem if the cause was not a natural disaster.

(2) Upon a report by a subscriber of a service interruption and if the interruption is caused by the video service provider and lasts for more than fours hours in a given day, the provider shall give the subscriber a credit in the amount of the cost of each such day's video service as would be billed to the subscriber.

(3) Upon a report by a subscriber of a service interruption and if the interruption is not caused by the video service provider and lasts for more than twenty-four consecutive hours, the provider shall give the subscriber, for each hour of service interruption, a credit in the amount of the cost of per hour video service as would be billed to the subscriber.

(4) The provider shall give a subscriber at least thirty days' advance, written notice before removing a channel from the provider's video service, but no such notice is required if the provider must remove the channel because of circumstances beyond its control.

(5) The provider shall give a subscriber at least ten days' advance, written notice of a disconnection of all or part of the subscriber's video service, except if the disconnection has been requested by the subscriber, is necessary to prevent theft of video service, or is necessary to reduce or prevent signal leakage as described in 47 C.F.R. 76.611.

(6) The provider shall not disconnect all or part of a subscriber's video service for failure of the subscriber to pay its video service bill, until the bill is at least forty-five days past due.

(7) The provider shall give a subscriber at least thirty days' advance, written notice before instituting an increase in video service rates.

Sec. 1332.27. (A) Before it provides or sells video service to one or more subscribers within its video service area or any additional video service area under division (C) of section 1332.25 of the Revised Code, a video service provider shall provide ten days' advance, written notice of that service or additional service to the respective municipal corporation or township and to every person providing video service in all or part of that video service area.

(B) A video service provider may transfer its video service authorization to a successor. Within ten days after completing the transfer, the provider shall provide written notice to the respective municipal corporation or township. The transfer is not valid until the date that the successor files a complete affidavit with the director of commerce containing the information specified in division (A) of section 1332.25 of the Revised Code. The director has no authority to act upon the notice or the completed affidavit.

(C)(1) A video service provider may terminate video service to its video service area, but only after providing ninety days' advance, written notice to the director, affected subscribers, and the respective municipal corporations or townships comprising the video service area. The director has no authority to act upon the notice.

(2) Notwithstanding division (C)(1) of this section, a video service provider that provided video service in this state under a franchise on the effective date of this section shall not abandon the video service it provided within the franchise area to subscribers served on that effective date, at least until the franchise would have expired if not terminated under division (B) of section 1332.23 of the Revised Code.

Sec. 1332.28. (A) Consistent with the "Telecommunications Act of

1996," Pub. L. No. 104-104, Title III, Sections 303(a), 110 Stat. 61, 124, 47 U.S.C. 541(a)(3) and to prohibit discriminatory practices against a group of potential residential subscribers, no video service provider shall deny access to video service to any group of potential residential subscribers in its video service area because of the race or income of the residents in the local area in which the group resides.

(B) It is an affirmative defense to a violation of division (A) of this section if the video service provider can demonstrate either of the following:

(1) Three years after the date it began providing video service in its video service area, at least twenty-five per cent of households with access to the provider's video service are low-income households.

(2) Five years after the date it began providing video service in its video service area and thereafter, at least thirty per cent of the households with access to the provider's video service are low-income households.

Sec. 1332.29. (A)(1) A video service provider that both uses telecommunications facilities to provide video service and has more than one million telephone access lines in this state shall provide access to video service to at least:

(a) Twenty-five per cent of the households in its video service area within two years after the date it began providing video service in that area;

(b) Fifty per cent of the households in its video service area within five years after the date it began providing video service in that area, except that a video service provider need not meet that fifty per cent requirement until two years after at least thirty per cent of the households with access to the provider's video service under its video service authorization subscribe to the service for six consecutive months.

(2) A video service provider may comply with division (A)(1)(a) or (b) of this section through the use of alternative technology, except satellite technology, that offers service, functionality, and content demonstrably similar to the service, functionality, and content the provider otherwise provides through its video service network.

(B) A video service provider shall file an annual report with the director of commerce describing its compliance with division (A) of this section or, as applicable, its progress toward that compliance.

(C) A video service provider may apply to the director for a waiver of or for an extension of time to comply with division (A)(1) of this section. The director may grant the waiver or extension only if the director determines that the video service provider has made substantial and continual effort to comply and determines that one or more of the following caused the provider's inability to comply:

(1) The provider is unable to obtain access to public and private rights-of-way under reasonable terms and conditions.

(2) Developments or buildings are not subject to competition because of existing, exclusive service arrangements.

(3) Developments or buildings are inaccessible using reasonable technical solutions under commercially reasonable terms and conditions.

(4) A natural disaster prevents compliance.

(5) There are other factors beyond the provider's control.

If an extension of time is granted, the director shall establish a new compliance deadline. If a waiver is granted, the director shall specify the requirement or requirements waived.

Sec. 1332.30. (A)(1)(a) If a municipal corporation or township has three or more PEG channels programmed on January 1, 2007, the person providing those channels pursuant to a franchise, competitive video service agreement, ordinance, or resolution or otherwise shall continue to provide those PEG channels, three of which shall be on the person's basic cable service, with the additional PEG channels on the person's basic cable service or on any service tier viewed by more than fifty per cent of the subscribers in the video service area. Any such additional channel may be reclaimed if it is not substantially utilized. For the purpose of divisions (A)(1)(a) and (B)(2) of this section, a PEG channel is "not substantially utilized" when fewer than forty hours of noncharacter-generated content are programmed on that channel each week and less than sixty per cent of the programming is nonrepeat and locally produced.

(b) If the municipal corporation or township has one or two PEG channels programmed on January 1, 2007, the person providing those channels pursuant to a franchise, competitive video service agreement, ordinance, or resolution or otherwise shall continue to provide the channel or channels, with one PEG channel on the person's basic cable service and, as applicable, the second PEG channel on the person's basic cable service or on any service tier viewed by more than fifty per cent of the subscribers in the video service area.

(2) A municipal corporation or township by written notice shall require a person providing video service in the municipal corporation or township on or after the effective date of this section, other than a person described in division (A)(1)(a) or (b) of this section, to provide the same number of PEG channels under the same service tier conditions and subject to the same channel reclamation as those required under division (A)(1)(a) or (b) of this section of the incumbent person but, if there is more than one such incumbent that provided PEG channels on January 1, 2007, the person shall

provide the same number required of the incumbent with the most recent obligation. The notice shall state the appropriate number of PEG channels and the service tiers required. Following receipt of that notice, the person shall provide the PEG channels not later than one hundred twenty days after the municipal corporation or township is able to deliver the PEG channel content.

(3) Nothing in division (A) of this section precludes a person and a municipal corporation or township from entering into other arrangements for PEG channels, including agreements increasing or decreasing the number of channels required under division (A)(1)(a) or (b) of this section.

(B)(1) A municipal corporation or a township that has no PEG channels programmed on January 1, 2007, and lies within a video service provider's video service area may require the video service provider by written notice to provide PEG channels beginning after the provider initially provides video service within the municipal corporation or unincorporated area of the township. The video service provider shall provide the PEG channels one hundred twenty days after the municipal corporation or township is able to deliver the PEG channel content. The provider may use any service tier viewed by more than fifty per cent of the subscribers in the video service area to provide the PEG channels.

(a) Except as provided in division (B)(2) of this section, the number of required PEG channels shall not exceed three if the respective municipal corporation or township has a population of at least fifty thousand, or two if the population is less than fifty thousand. If there is more than one video service provider providing PEG channels in the municipal corporation or township, the number of channels shall be the same for all the video service providers.

(b) If a video service provider distributes video programming to more than one municipal corporation or township through a single headend or video hub office and the aggregate population of the municipal corporations or townships is at least fifty thousand, none of those municipal corporations or townships shall require the provider to provide, in the aggregate, channel capacity for more than three PEG channels. If the aggregate population is less than fifty thousand, none of those municipal corporations or townships shall require the provider to provide, in the aggregate, channel capacity for more than two PEG channels.

(2) A video service provider may reclaim a PEG channel under division (B) of this section that it determines is not substantially utilized. At such time as the municipal corporation or township that caused the establishment of the PEG channel can later certify that the channel will be substantially

utilized, the video service provider, within one hundred twenty days after the date the video service provider receives that certification, shall restore the reclaimed channel as a PEG channel. However, the provider need not carry that channel on any specified tier of service.

(C) No municipal corporation or township shall require a video service provider to provide any institutional network on its video service network, except that a person that, pursuant to a franchise, competitive video service agreement, ordinance, or resolution or otherwise, provided any institutional network on January 1, 2007, shall continue to provide the institutional network until the obligation would have expired if not terminated pursuant to division (B) of section 1332.23 of the Revised Code, or, if earlier and as applicable, until January 1, 2012, or such earlier date as may be specified in an ordinance or resolution in effect on the effective date of this section. The provider shall give the municipal corporation or township at least one hundred twenty days' written advance notice of that termination. If the obligation included terms regarding the infrastructure of the institutional network upon the expiration of the obligation, the video service provider shall honor those terms. Nothing in this division precludes such a video service provider and a municipal corporation or township from entering into other arrangements for institutional networks.

(D) A video service provider shall accept PEG channel content and programming under this section that, at the least, meets the transmission standards of the national television standards committee in effect on the effective date of this section.

(E)(1) The unfulfilled obligation of a person under a franchise, competitive video service agreement, ordinance, or resolution in effect on the effective date of this section to provide monetary or other support to a municipal corporation or township for PEG channel facilities shall continue until the obligation would have expired if not terminated pursuant to division (B) of section 1332.23 of the Revised Code or, if earlier and as applicable, January 1, 2012, or such earlier date as many be specified in an ordinance or resolution in effect on the effective date of this section.

(2)(a) Each other person providing access to video service within the municipal corporation or the unincorporated area of a township after the effective date of this section shall have a pro rata share of the same unfulfilled obligation to support PEG channel facilities during the same time period as the incumbent under division (E)(1) of this section, but, if there is more than one such incumbent, each other person shall have the same obligation as the incumbent with the most recent obligation.

(i) If the incumbent support is in the form of a percentage of gross

revenues or a per subscriber fee, the video service provider shall provide that same level of support in that same form.

(ii) If the incumbent support is in the form of a lump sum payment without an offset to its video service provider fee, the video service provider shall be responsible for a pro rata share of that payment.

(iii) If the incumbent provides in-kind support, the video service provider shall pay the municipal corporation or township a pro rata share of the fair market value of that support.

The video service provider may identify and collect the amount of any fees authorized by divisions (E)(2)(a)(i) or any payment authorized under division (E)(2)(a)(ii) or (iii) of this section and the cost of any content conversion, if applicable, as a separate line item on the bills of its subscribers having service addresses within the municipal corporation or unincorporated area of the township.

(b) A video service provider's pro rata share of the unfulfilled obligation under division (E)(2)(a)(ii) or (iii) of this section shall be based on its proportion of video service subscribers with service addresses in the municipal corporation or unincorporated area of the township. For the purpose of determining the pro rata shares, all persons under divisions (E)(1) and (2) of this section shall report quarterly to the municipal corporation or township the total number of subscribers served within the municipal corporation or the unincorporated area of the township. This information shall be treated as confidential by the municipal corporation or township and shall be used only to derive the pro rata shares.

(c) The person shall remit its pro rata share to the municipal corporation or township quarterly, not sooner than forty-five nor later than sixty days after the end of the preceding calendar quarter. However, the person need not pay its pro rata share unless the municipal corporation or township provided notice to the person of the amount due. The municipal corporation or township shall use the payments only as authorized under federal law.

(F)(1) If a municipal corporation or township requires a person to provide connectivity for PEG channel programming on January 1, 2007, the person shall fulfill that obligation and provide connectivity sufficient to connect its headend or video hub office to the municipality's or township's PEG access channel origination points existing as of January 1, 2007. The obligation shall expire January 1, 2012, or such earlier date as may be specified in an ordinance or resolution of the municipal corporation or township in effect on the effective date of this section or, if earlier, at the end of the most recent such connectivity obligation of any person to the municipal corporation or township. The person may use the most

economically and technologically efficient means of providing that capacity.

The person may identify and collect the amount of its costs to provide connectivity as a separate line item on the bills of its subscribers having service addresses in the municipal corporation or unincorporated area of the township.

(2) During the time described in division (F)(1) of this section, if the municipal corporation or township requests that a PEG channel origination point existing as of January 1, 2007, be relocated, the person may charge the municipal corporation or township for the costs of constructing that part of a transmission line, connecting the person's headend or video hub office to the relocated point, that extends two hundred feet beyond the headend or video hub, but not for the costs associated with the transmission of the PEG programming. Also, during that time, the person may charge for the construction costs associated with additional origination points, but not for the costs associated with the transmission of the PEG programming.

(G) Except as otherwise provided in this section, no municipal corporation or township shall require a video service provider to provide any funds, services, programming, facilities, or equipment related to PEG channels. PEG channel operation and programming shall be the sole responsibility of the municipal corporation or township. Except as otherwise provided in this section, the video service provider shall bear only the responsibility for the transmission to subscribers of the PEG channel programming once the programming is delivered to the video service provider.

Sec. 1332.31. Not later than six months after the effective date of its video service authorization, a video service provider shall carry emergency interrupt service announcements transmitted by local television broadcasters and shall transmit national, state, and local emergency interrupt service announcements as required by 47 C.F.R. 11.11 et seq. or as otherwise required by the federal communications commission.

Sec. 1332.32. (A) Not sooner than forty-five nor later than sixty days after the end of each calendar quarter, a video service provider shall pay a video service provider fee to each municipal corporation and each township in which it offers video service. The fee shall be calculated quarterly by determining the provider's gross revenue for the preceding calendar quarter as described in division (B) of this section and multiplying the result by the percentage specified in division (C)(1)(a) or (b) of this section.

(B) Gross revenue shall be computed in accordance with generally accepted accounting principles.

(1) Gross revenue shall consist of all of the following revenue for the

calendar quarter that is collected by the provider for video service from all its subscribers having service addresses within the municipal corporation or, respectively, the unincorporated area of the township:

(a) Recurring monthly charges for video service;

(b) Event-based charges for video service, including, but not limited to, pay-per-view and video-on-demand charges;

(c) Charges for rental of set top boxes and other video service equipment;

(d) Service charges related to the provision of video service, including, but not limited to, activation, installation, and repair;

(e) Administrative charges related to the provision of video service, including, but not limited to, service order and service termination charges.

(2) Gross revenue shall not include any of the following:

(a) Any taxes, fees, or assessments that are collected by the video service provider from video service subscribers for pass-through to any federal, state, or local government agency, including the video service provider fee authorized under this section, the fee authorized under division (F) of section 1332.30 of the Revised Code, and the federal communication commission user fee;

(b) Uncollectible charges, except that uncollectible charges, all or part of which are written off as bad debt but subsequently collected, less the expenses of their collection shall be included in gross revenue in the quarter collected;

(c) Late payment charges;

(d) Maintenance charges;

(e) Charges for services other than video service, reasonably identifiable on books or records the video service provider keeps in the regular course of business or by other reasonable means, that are aggregated or bundled with amounts billed to video service subscribers, including, but not limited to, any revenue received by a video service provider or its affiliates for telecommunications service, information service, or the provision of directory or internet advertising, including yellow pages, white pages, banner advertising, and electronic publishing;

(f) Reimbursement by programmers of marketing costs actually incurred by the video service provider;

(g) Advertising revenue, unless a municipal corporation enacts an ordinance or a board of township trustees adopts a resolution that uniformly applies to all video service providers. For those purposes, "advertising revenue" means the net revenue received by the video service provider for advertising on its subscription-based video service within a municipal

corporation or the unincorporated area of a township. If such revenue is derived under a regional or national compensation contract or arrangement between the video service provider and one or more advertisers or advertising representatives, the amount of revenue derived for a municipal corporation or for the unincorporated area of a township shall be determined by multiplying the total net revenue received by the video service provider under the contract or arrangement by the percentage resulting from dividing the number of subscribers in the municipal corporation or unincorporated area of a township by the total number of regional or national subscribers that potentially receive the advertising under the contract or arrangement. The municipal corporation or township shall promptly notify affected video service providers of the ordinance or resolution, which shall not take effect until the first day of the first calendar quarter that begins more than thirty days after the notice.

(h) Subject to division (B)(2)(g) of this section, any revenue not expressly enumerated in division (B)(1) of this section.

(C)(1)(a) If in the calendar quarter a franchise fee is payable by a cable operator under a franchise in effect in a municipal corporation or township as provided under division (B) of section 1332.23 of the Revised Code, the percentage of gross revenue payable in that calendar quarter by a video service provider to the municipal corporation or township shall be the same percentage of gross revenue payable in that calendar quarter pursuant to that franchise, not to exceed five per cent. If there is more than one such franchise of a cable operator in effect in that quarter, the lowest such percentage shall be used.

(b) Otherwise, the percentage shall be zero or such higher percentage, not to exceed five per cent, as is specified in an ordinance or resolution that the municipal corporation or township may enact or adopt for the purpose of this section.

(2) The municipal corporation or township shall provide written notice to the video service provider of the appropriate percentage under division (C)(1)(a) or (b) of this section within ten days after it receives the notice required by division (A) of section 1332.27 of the Revised Code that the video service provider will commence to provide access to video service in the municipal corporation or unincorporated area of the township. A provider need not pay the fee unless the municipal corporation or township provided that notice.

(D) A video service provider that pays a video service provider fee pursuant to this section may identify and collect the amount of that fee as a separate line item on the regular bill of each of its video service subscribers

that has a service address within any portion of the municipal corporation or, respectively, within the unincorporated area of the township.

Sec. 1332.33. (A) At its sole expense and not more often than once per calendar year, a municipal corporation or township may conduct an audit for the purpose of verifying the accuracy of a video service provider's calculation of the video service provider fees it paid to the municipal corporation or township in the audit period. For the purpose of the audit, the video service provider shall make available for inspection, at the location where such records are kept in the normal course of business, those records pertaining to its gross revenue as defined in division (B) of section 1332.32 of the Revised Code. The provider need not retain those records for longer than three years after the year for which the fee was payable, unless the municipal corporation or township has commenced an action under division (C) of this section.

(B) A video service provider shall pay any amounts found to have been underpaid in the audit within thirty days after notice and shall include interest on the underpayments as provided in section 1343.03 of the Revised Code. However, payment need not be made in that thirty-day period if the video service provider brings an action under division (D) of this section.

(C)(1) No municipal corporation or township shall employ, appoint, or retain any person to conduct an audit under division (A) of this section for compensation that is dependent on the dollar amount of the audit findings. Divisions (C)(1) and (2) of this section do not prohibit or limit the hiring of legal counsel on a contingency fee basis to enforce the findings of an audit.

(2) No person shall solicit or accept compensation that is dependent in any manner upon the outcome of an audit under division (A) of this section, including compensation dependent on the audit findings or the recovery of fees or other payment by the municipal corporation, township, or video service provider.

(D) An action by the municipal corporation or township or by the video service provider to dispute the amount of video service provider fee due based on the audit results shall be brought in a court of competent jurisdiction not later than two years following the end of the quarter to which the disputed amount relates.

(E) A municipal corporation or township shall be deemed to accept as full payment any payment of a video service provider fee that it does not challenge as provided under division (D) of this section.

Sec. 1332.34. Nothing in sections 1332.21 to 1332.33 of the Revised Code is intended to be inconsistent with the "Cable Communications Policy Act of 1984," 98 Stat. 2779, 47 U.S.C. 521 to 573.

SECTION 2. That existing section 153.64 and sections 505.90, 505.91, and 505.92 of the Revised Code are hereby repealed.

Am. Sub. S. B. No. 117

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Am. Sub. S. B. No. 117

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____