

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 539

BY BUSINESS COMMITTEE

AN ACT

1 RELATING TO THE IDAHO VIDEO SERVICE ACT; AMENDING TITLE 50, IDAHO CODE, BY
2 THE ADDITION OF A NEW CHAPTER 30, TITLE 50, IDAHO CODE, TO PROVIDE A
3 SHORT TITLE, TO DEFINE TERMS, TO PROVIDE FOR FRANCHISING AUTHORITY, TO
4 PROVIDE FOR MODIFICATIONS OF EXISTING FRANCHISE AGREEMENTS, TO PROVIDE
5 FOR A HOLDER OF CERTIFICATE, TO PROVIDE FOR AMENDMENT OF THE CERTIFICATE
6 OF FRANCHISE AUTHORITY, TO PROVIDE FOR PROVISION OF ACCESS TO VIDEO SER-
7 VICE WITHIN A CERTAIN PERIOD, TO PROVIDE FOR SUSPENSION OF AUTHORITY FOR
8 NONCOMPLIANCE WITH CERTAIN REQUIREMENTS, TO PROVIDE FOR FEES, TO PRO-
9 VIDE FOR THE USE OF PUBLIC RIGHTS-OF-WAY, TO PROVIDE FOR A VIDEO SERVICE
10 PROVIDER FEE, TO PROHIBIT DISCRIMINATION AMONG POTENTIAL RESIDENTIAL
11 SUBSCRIBERS AND TO PROVIDE FOR VIOLATIONS, TO PROVIDE FOR CUSTOMER SER-
12 VICE STANDARDS, TO PROVIDE FOR DESIGNATION AND USE OF CHANNEL CAPACITY
13 FOR PUBLIC, EDUCATIONAL OR GOVERNMENTAL USE AND TO PROVIDE FOR APPLICA-
14 BILITY OF OTHER LAW; AND PROVIDING SEVERABILITY.
15

16 Be It Enacted by the Legislature of the State of Idaho:

17 SECTION 1. That Title 50, Idaho Code, be, and the same is hereby amended
18 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
19 ter 30, Title 50, Idaho Code, and to read as follows:

20 CHAPTER 30
21 IDAHO VIDEO SERVICE ACT

22 50-3001. SHORT TITLE. This chapter shall be known and may be cited as
23 the "Idaho Video Service Act."

24 50-3002. DEFINITIONS. As used in this chapter:

25 (1) "Access to video service" means the capability of a video service
26 provider to provide video service at a household address irrespective of
27 whether a subscriber has ordered the service or whether the service is actu-
28 ally provided at the address.

29 (2) "Cable service" has the meaning ascribed to it in 47 U.S.C. section
30 522, as that section existed on January 1, 2012.

31 (3) "Cable system" has the meaning ascribed to it in 47 U.S.C. section
32 522, as that section existed on January 1, 2012.

33 (4) "Certificate of franchise authority" means a certificate issued by
34 the Idaho secretary of state to a video service provider pursuant to the pro-
35 visions of this chapter.

36 (5) "Chapter" means chapter 30, title 50, Idaho Code.

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

1 (7) "Franchising entity" means the state of Idaho or a city or county
2 within the state of Idaho authorized by state or federal law to grant a fran-
3 chise.

4 (8) "Governing body" means the city council or the board of county com-
5 missioners of a political subdivision.

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

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

14 (11) "Nonincumbent video service provider" means:

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

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

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

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

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

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

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

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

42 (18) "Video service" means the delivery of video programming to sub-
43 scribers, which programming is generally considered comparable to video
44 programming delivered to viewers by a television broadcast station, cable
45 service or digital television service, without regard to the technology
46 used to deliver the video service, and which service is provided primarily
47 through equipment or facilities located in whole or in part in, on, under
48 or over any public rights-of-way. The term includes cable service, but
49 excludes any video programming provided to persons in their capacity as
50 subscribers to commercial mobile service as defined in 47 U.S.C. section

1 332(d), or video programming provided as part of and via a service that en-
 2 ables end users to access content, information, electronic mail or other
 3 services offered over the public internet.

4 (19) "Video service provider" means a provider of video service, and in-
 5 cludes an incumbent cable or multichannel video service provider, a nonin-
 6 cumbent video service provider or a system operator, unless the context in
 7 which the term is used indicates otherwise.

8 (20) "Video service provider fee" means the amount paid by a system op-
 9 erator to a political subdivision pursuant to section 50-3007, Idaho Code.

10 50-3003. FRANCHISING AUTHORITY -- APPLICATION FOR CERTIFICATE OF
 11 FRANCHISE AUTHORITY -- MODIFICATION OF SERVICE AREAS -- TERM OF CERTIFI-
 12 CATE OF FRANCHISE AUTHORITY AND TERMINATION THEREOF. (1) On and after July
 13 1, 2012, no person shall act as a video service provider or operate a video
 14 service network within the state of Idaho unless such person:

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

19 (b) Is a nonincumbent cable service provider who:

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

27 (ii) Elects to adopt the terms and conditions of an existing fran-
 28 chise issued by a political subdivision to an incumbent cable ser-
 29 vice provider providing video service within the same service area
 30 and who has been issued a franchise from the political subdivision
 31 authorizing the video service provider to provide video services
 32 within the political subdivision pursuant to the same terms and
 33 conditions as the franchise issued to the incumbent cable service
 34 provider in the political subdivision; or

35 (c) Has been granted a certificate of franchise authority to do busi-
 36 ness in the state of Idaho as a system operator by the Idaho secretary of
 37 state, as authorized in this chapter.

38 (2) (a) Nothing in this chapter shall be construed to prohibit a per-
 39 son from holding a franchise issued by a political subdivision and hold-
 40 ing a certificate of franchise authority issued by the Idaho secretary
 41 of state for a different service area. Provided however, a video ser-
 42 vice provider shall not hold a franchise issued by a political subdivi-
 43 sion and a certificate of franchise authority issued by the secretary of
 44 state for the same service area, except as permitted pursuant to para-
 45 graph (b) of this subsection.

46 (b) An incumbent cable service provider may submit an application for
 47 a certificate of franchise authority for a service area in which the
 48 incumbent cable service provider has an existing franchise from a po-
 49 litical subdivision for such service area and, upon the granting of

1 a certificate of franchise authority to the incumbent cable service
2 provider, the incumbent cable service provider's franchise from the
3 political subdivision shall no longer be of any force or effect.

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

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

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

15 (b) A specific identification of the political subdivision(s) consti-
16 tuting the service area wherein the applicant intends to provide video
17 service;

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

20 (d) Verification signed by an officer or general partner of the appli-
21 cant that:

22 (i) The applicant has filed with the federal communications com-
23 mission all forms required by that agency in advance of offering
24 video service in this state; and

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

31 (e) Verification that the applicant has procured and will maintain
32 comprehensive general liability insurance coverage and automobile li-
33 ability insurance coverage underwritten by one (1) or more companies
34 licensed to do business in the state of Idaho requiring that the insur-
35 ance carrier pay on behalf of the applicant, to a limit of not less than
36 five hundred thousand dollars (\$500,000) for bodily or personal injury,
37 death, or property damage or loss as a result of any one (1) occurrence
38 or accident, regardless of the number of persons injured or the number
39 of claimants, arising out of the negligent or otherwise wrongful act
40 or omission of the applicant or applicant's employees or agents. Ver-
41 ification that a certificate of self-insurance has been issued to the
42 applicant and maintained in accordance with the provisions of section
43 49-1224, Idaho Code, shall be deemed to satisfy the requirements of this
44 subsection.

45 (4) The application shall be accompanied by a filing fee as set forth
46 in section 50-3005, Idaho Code. Within thirty (30) days after filing of the
47 application, or within thirty (30) days after the filing of supplemental in-
48 formation necessary to make the application complete, the secretary of state
49 shall determine the completeness of an application or, if applicable, shall
50 notify the applicant of a determination that the application or the applica-

1 tion as supplemented by additional information is incomplete, state the ba-
2 sis for that determination, and inform the applicant that the applicant may
3 resubmit a correct application. The secretary of state shall issue a cer-
4 tificate of franchise authority within fifteen (15) days after the secretary
5 of state's determination that the filed application is complete and in com-
6 pliance with the requirements of this chapter. Upon issuance of a certifi-
7 cate of franchise authority, the secretary of state shall, within fifteen
8 (15) days from the date of such issuance, provide written notice of such is-
9 suance, provide written notice of such issuance to the governing body of each
10 political subdivision and of each local unit of government located within
11 the service area designated in the application for a certificate of fran-
12 chise authority.

13 (5) A holder of a certificate of franchise authority may modify the
14 boundaries of an existing service area authorized under the certificate by
15 filing written notice of the modification with the secretary of state ac-
16 companied by the fee required by section 50-3005, Idaho Code. The holder of
17 the certificate may make the modification on the date on which it files the
18 written notice with the secretary of state.

19 (6) A certificate of franchise authority may be transferred to any suc-
20 cessor of the system operator to which the certificate of franchise author-
21 ity was initially issued upon the successor filing an application containing
22 the same information as required in subsection (3) of this section. A suc-
23 cessor may only undertake operation and maintenance of video facilities pur-
24 suant to an approved certificate of franchise authority upon providing no-
25 tice to the local unit of government with jurisdiction concerning the public
26 rights-of-way to be used. A successor shall be responsible to conform to ap-
27 proved plans and permits to coordinate installation and maintenance as re-
28 quired by the local unit of government.

29 (7) A certificate of franchise authority may be terminated by the sys-
30 tem operator submitting a written notice to the secretary of state and any
31 affected local unit of government. No approval of the termination of the
32 certificate of franchise authority shall be required by the secretary of
33 state or by any affected local unit of government. Termination of a cer-
34 tificate of franchise authority shall not relieve a system operator of any
35 obligation to mitigate the effects of abandoned physical facilities remain-
36 ing in any public rights-of-way.

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

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

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

47 50-3004. PROVISION OF ACCESS TO VIDEO SERVICE WITHIN A CERTAIN PERIOD
48 -- SUSPENSION OF AUTHORITY FOR NONCOMPLIANCE WITH CERTAIN REQUIREMENTS. (1)
49 Not later than twenty-four (24) months after the date on which the secretary

1 of state issues a certificate of franchise authority pursuant to section
2 50-3003, Idaho Code, the holder of the certificate must provide access to
3 video service within the territorial boundaries of each service area identi-
4 fied in and authorized by the certificate of franchise authority.

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

15 50-3005. FEES. (1) In carrying out the provisions of this chapter, the
16 secretary of state shall charge and collect the fees set forth in this sec-
17 tion.

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

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

25 50-3006. USE OF PUBLIC RIGHTS-OF-WAY BY A HOLDER OF A CERTIFICATE OF
26 FRANCHISE AUTHORITY. (1) A local unit of government shall allow the holder of
27 a certificate of franchise authority to install, construct and maintain fa-
28 cilities within the public rights-of-way, over which the local unit of gov-
29 ernment has jurisdiction, to enable the provision of video services to sub-
30 scribers to such services. No provision of this chapter shall diminish or
31 otherwise limit the authority of this state, highway district or other local
32 unit of government having jurisdiction over the public rights-of-way. Noth-
33 ing in this chapter shall be construed to limit, abrogate or supersede the
34 provisions of any applicable local ordinance or other regulation governing
35 the use of the public rights-of-way.

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

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

46 (b) A certificate of franchise authority granted pursuant to this
47 chapter carries with it an obligation to respect orderly management
48 and maintenance of public rights-of-way by the system operator. A

1 system operator authorized hereby to use public rights-of-way shall
2 employ sound construction practices to maintain the integrity of public
3 improvements and preexisting rights-of-way conditions and shall be re-
4 sponsible for repair or replacement of any improvements or maintenance
5 or restoration of any conditions disrupted by construction activities.
6 The system operator shall cause any such repair or replacement to be
7 made promptly and in a manner that complies with adopted standards or
8 as is otherwise appropriate to restore the rights-of-way to conditions
9 existing before installation.

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

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

19 (4) A local unit of government may not impose requirements that dis-
20 criminate against a system operator in any manner, including:

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

23 (b) Access to a public building; or

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

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

31 (5) A local unit of government may impose a permit or license fee on a
32 system operator relating to the opening, closing, inspection or repair of
33 public rights-of-way over which rights-of-way the local unit of government
34 has jurisdiction, but only to the extent it imposes such a fee on other video
35 service providers. A fee authorized in this section shall not exceed the ac-
36 tual costs incurred by the local unit of government that are directly related
37 to the system operator's activity in the rights-of-way with which the permit
38 is associated. In no event may a fee under this subsection be charged:

39 (a) If the system operator, or its affiliate, already has paid a per-
40 mit fee in connection with the same activity in the public rights-of-way
41 that would otherwise be covered by the permit fee under this section; or

42 (b) For general revenue purposes.

43 50-3007. VIDEO SERVICE PROVIDER FEE. (1) A system operator providing
44 video service within a political subdivision pursuant to a certificate of
45 franchise authority shall pay to the political subdivision in which it pro-
46 vides video service a video service provider fee as may be required by the po-
47 litical subdivision pursuant to this section. For the purposes of this sec-
48 tion, subscribers whose service address is within the jurisdictional limits
49 of a city shall be deemed city subscribers and those subscribers whose ser-

1 vice address is outside the jurisdictional limits of a city shall be deemed
2 county subscribers.

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

12 (3) The fee authorized by this section shall be a percentage of gross
13 revenue, as defined in this section, and shall be determined by the politi-
14 cal subdivision. If there is an incumbent cable service provider providing
15 cable service in the political subdivision, the system operator shall pay
16 an amount equal to the percentage of gross revenue paid by an incumbent ca-
17 ble service provider or five percent (5%), whichever is less. If there is no
18 incumbent cable service provider having a franchise agreement with the po-
19 litical subdivision, or if a political subdivision has not previously estab-
20 lished and assessed such fee to an incumbent cable service provider, the fee
21 shall be established by the political subdivision, in an amount not in ex-
22 cess of five percent (5%) of the gross revenue, which fee shall be applica-
23 ble to all video service providers within the political subdivision, regard-
24 less of whether they provide video service pursuant to a local franchise or a cer-
25 tificate of franchise authority.

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

27 (i) "Gross revenues" means all revenues, calculated in accord-
28 dance with generally accepted accounting principles (GAAP), that
29 are received by the system operator from subscribers for the pro-
30 vision of video service to subscribers within the jurisdictional
31 limits of the political subdivision. Gross revenues shall include
32 the following:

33 1. All recurring charges and fees paid by subscribers for
34 the provision of video service; equipment rental charges,
35 late fees and insufficient funds fees; and fees attribut-
36 able to video service when sold individually or as part of a
37 package or bundle, or functionally integrated with services
38 other than video services. The term "gross revenues" shall
39 not include any charges resulting from action by a federal
40 agency or taxes or surcharges imposed by a governmental body
41 which are separately itemized and billed by a video service
42 provider to its subscribers;

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

45 3. Any other consideration a system operator receives from
46 its subscribers for providing video service when it is re-
47 ceived in a transaction that would evade imposition of a
48 franchise fee if such consideration is not included in rev-
49 enue.

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

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

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

25 (5) Payment of the fees as required in this section shall be accompanied
26 by a written report identifying the amount of revenues received from sub-
27 scribers for the provision of video services to the subscribers and identi-
28 fying exclusions from gross revenues, if any. A political subdivision may,
29 upon reasonable advance written notice, but not more frequently than once in
30 any calendar year, review the business records of a system operator to the
31 extent necessary to ensure proper and accurate payment of the video service
32 provider fee. A system operator shall provide sufficient information about
33 such revenues to a political subdivision to allow a proper compliance review
34 by such political subdivision. The system operator shall keep all business
35 records reflecting any gross revenues, even if there is a change in owner-
36 ship, for at least three (3) years after those revenues are recognized by
37 the system operator in its books and records. All records reasonably nec-
38 essary for the audit shall, at the discretion of the political subdivision,
39 be made available by the system operator at the location within the jurisdic-
40 tion where the records are kept in the ordinary course of business, or may be
41 provided electronically to the political subdivision with its consent. The
42 political subdivision and the system operator shall each be responsible for
43 their respective costs of the audit, unless the audit discloses that the sys-
44 tem operator has underpaid the video service provider fee by more than seven
45 percent (7%) during the examination period, in which case the system opera-
46 tor shall pay all of the reasonable and actual costs of the audit. Any undis-
47 puted amount or refund due to the political subdivision or the system opera-
48 tor shall be paid within sixty (60) days, plus interest at the statutory rate
49 on civil judgments.

1 (6) A system operator may identify and collect the amount of the video
2 service provider fee as a separate line item on the regular bill of each sub-
3 scriber.

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

11 50-3008. DISCRIMINATION AMONG POTENTIAL RESIDENTIAL SUBSCRIBERS PRO-
12 HIBITED -- VIOLATIONS. (1) A system operator shall not deny access to video
13 service to any group of potential residential subscribers because of the in-
14 come of the residents in the local area in which such group resides.

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

24 (3) Any potential residential subscriber or group of residential sub-
25 scribers who believes it is being denied access to services in violation
26 of the provisions of this section may file a complaint with the govern-
27 ing authority of the political subdivision within the service area of the
28 system operator in which the subscribers or potential subscribers reside.
29 The complaint shall provide a clear statement of the facts and information
30 upon which it bases the complaint. Upon receipt of any such complaint,
31 the governing authority shall serve a copy of the complaint and supporting
32 materials upon the subject system operator, and shall require the system op-
33 erator to submit a written answer and other relevant information in response
34 to the complaint within thirty (30) days from service of the complaint on
35 the system operator. If the governing authority, after examination of the
36 complaint and answer thereto, is not successful in informally resolving the
37 dispute, the governing authority may require the system operator and the
38 complainants to enter into mediation. Alternatively, either party may seek
39 judicial determination of the issues. If a court finds that the holder of
40 a certificate of franchise authority is denying access to video service to
41 any group of potential residential subscribers because of the income level
42 of the residents in the local area in which such group resides, the holder of
43 a certificate of franchise authority shall provide access to video service
44 to the affected group of potential subscribers within a reasonable period of
45 time, as specified by the court, to cure such noncompliance.

46 50-3009. CUSTOMER SERVICE STANDARDS. A system operator shall comply
47 with the customer service requirements as set forth in 47 CFR 76.309(c), as
48 amended from time to time, and shall maintain a local or toll-free telephone

1 number for customer service contact. A political subdivision may provide
2 such assistance to subscribers as the political subdivision may deem appro-
3 priate to enforce the provisions of this section.

4 50-3010. DESIGNATION AND USE OF CHANNEL CAPACITY FOR PUBLIC, EDUCA-
5 TIONAL OR GOVERNMENTAL USE. (1) On, or within a reasonable period of time
6 after, the date on which a system operator first provides video service to a
7 subscriber within the service area of a political subdivision, a system op-
8 erator shall designate a sufficient amount of capacity on its video service
9 network to allow the provision of public, educational and governmental ac-
10 cess channels or their functional equivalents, hereinafter referred to in
11 this section as PEG channels, for noncommercial programming, as follows:

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

17 (b) If there is no incumbent cable service provider or no PEG channels
18 have been activated within the jurisdictional limits of the politi-
19 cal subdivision located within the system operator's service area on
20 the date on which the system operator first provides video service
21 to a subscriber within such service area, the system operator shall,
22 upon request, provide a maximum of two (2), in total, PEG channels for
23 a political subdivision with a population of at least fifty thousand
24 (50,000), and one (1), in total, PEG channel for a political subdivi-
25 sion with a population of less than fifty thousand (50,000). Provided
26 however, a request by a political subdivision for the provision of PEG
27 channels by a system operator, or a waiver of the requirement to provide
28 PEG channels, shall be uniformly applied to all system operators pro-
29 viding video service within the political subdivision.

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

40 (d) PEG channels provided by a system operator may be located by the
41 system operator on any service tier subscribed to by more than fifty
42 percent (50%) of a system operator's subscribers. PEG channels shall
43 be of similar quality and functionality to that offered by commercial
44 channels on such tier of service unless the signal is provided to the
45 system operator at a lower quality or with less functionality.

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

1 (f) The PEG agency producing the PEG programming and transmitting it
2 to the system operator shall ensure that all transmissions, content
3 or programming to be transmitted to the system operator are provided
4 or submitted in a manner or form that is capable of being accepted and
5 transmitted by the system operator over its video service network with-
6 out alteration or change in the content or transmission signal and is
7 compatible with the technology or protocol utilized by the system op-
8 erator to deliver its video service. If the PEG agency cannot produce
9 or maintain PEG programming in that manner or form, the agency shall do
10 so in a manner that conforms to the then existing industry standards.
11 If a change by the PEG agency in the manner or form of the content or
12 programming is required, and such change conforms to the then existing
13 industry standards, the system operator shall accept such programming
14 for transmission over its video service network in the manner that is
15 most economical to the system operator.

16 (2) The production and content of any programming aired on any channel
17 provided for PEG use shall be solely the responsibility of the public, edu-
18 cational and governmental agencies receiving the benefit of such capacity.
19 The system operator shall bear the responsibility for the transmission of
20 such content only to the extent that such content complies with the require-
21 ments of subsection (1) (f) of this section.

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

31 (4) No franchising entity may require a video service provider to pro-
32 vide any institutional network or equivalent capacity on its video service
33 network.

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

41 (6) The operation of any PEG channel provided pursuant to this section
42 and the production of any programming that appears on each such channel shall
43 be the sole responsibility of the governmental entity receiving the benefit
44 of such channel, and the system operator shall bear only the responsibility
45 for the transmission of the programming on each such channel to subscribers
46 and the initial cost of connecting to existing and obligated PEG access chan-
47 nels.

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

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

11 (3) Nothing in this chapter shall be construed to limit, abrogate or su-
12 perse the provisions of titles 61 and 62, Idaho Code, regarding telecom-
13 munications service within the state of Idaho, nor to require a telephone
14 corporation to obtain a certificate of franchise authority or local autho-
15 rization pursuant to this chapter for the purpose of permitting or authoriz-
16 ing the telephone corporation to construct, upgrade, operate or maintain its
17 telecommunications system to provide telecommunications service.

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

24 SECTION 2. SEVERABILITY. The provisions of this act are hereby declared
25 to be severable and if any provision of this act or the application of such
26 provision to any person or circumstance is declared invalid for any reason,
27 such declaration shall not affect the validity of the remaining portions of
28 this act.