

062705372

HOUSE BILL NO. 881

Offered January 11, 2006

Prefiled January 10, 2006

A BILL to amend and reenact § 15.2-2108 of the Code of Virginia, relating to cable service franchises.

Patron—Kilgore

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:**1. That § 15.2-2108 of the Code of Virginia is amended and reenacted as follows:**

§ 15.2-2108. Franchising of cable service.

A. The words "~~cable television~~" as used in this section:*"Affiliate," in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.**"Basic service tier" means a service tier designated by the cable operator as such and which includes (i) the retransmission of local television broadcast channels, (ii) public, educational, and governmental channels required to be carried in the basic tier, and (iii) any television broadcast signal of any channel that is provided by the cable operator to any subscriber.**"Cable operator" means any person or group of persons (i) that provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system or (ii) that otherwise controls or is responsible for, through any arrangement, the management and operation of a cable system. Cable operator does not include a provider of wireless or direct-to-home satellite transmission service.**"Cable service" means the one-way transmission to subscribers of (i) video programming or (ii) other programming service, and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.**"Cable system" as used in this section shall mean means any facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, except that such definition shall not include (i) a system that serves fewer than ~~twenty~~ 20 subscribers, (ii) a facility that serves only to retransmit the television signals of one or more television broadcast stations, (iii) a facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities use without using any public right-of-way, (iv) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 U.S.C. § 201 et seq., except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services, (v) any facilities of any electric utility used solely for operating its electric systems, or (vi) any portion of a system that serves fewer than fifty subscribers in any locality, where such portion is a part of a larger system franchised in an adjacent locality, or (vii) an open video system that complies with § 653 of Title VI of the federal Communications Act of 1934 (47 U.S.C. § 573), as amended.**The words "cable service" as used in this section mean the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service.**"Certificated provider of telecommunications services" means a person holding a certificate issued by the State Corporation Commission to provide local exchange telephone service.**"Effective competition" means (i) at least two providers of video programming, whether landline, satellite, or other, offering video programming to at least 50% of the households in the applicable franchise area of the locality and that video programming is comparable to the video programming offered by the cable operator seeking to become an eligible video provider; and (ii) at least 15% of the households in the applicable franchise area in the aggregate subscribe to video programming from other than the largest provider of video programming in the applicable franchise area of the locality.**"Eligible video provider" means either (i) a certificated provider of telecommunications services with previous consent to use the public rights-of-way in a locality through a franchise, including the provision of telecommunications services over facilities leased from an entity with previous consent to use the public rights-of-way in a locality through a franchise, but without previous consent to provide cable service or video service in that locality, (ii) a cable operator with a franchise to use the public*

59 *rights-of-way to provide cable service in a locality and that received the consent of the governing body*
60 *of that locality to renew its franchise under this section, or (iii) a public utility with previous consent to*
61 *use the public rights-of-way in a locality that invokes this section to renew its authorization to use the*
62 *public rights-of-way, except that a municipality shall meet the requirements of Article 1.1 (§ 15.2-2108.2*
63 *et seq.) of this chapter or otherwise be authorized to provide cable service prior to qualifying as an*
64 *eligible video provider.*

65 *"Franchise" means an initial authorization, or renewal thereof, issued by a franchising authority,*
66 *including a locality or the Commonwealth Transportation Board, whether such authorization is*
67 *designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, that*
68 *authorizes the construction or operation of a cable system, a telecommunications system, or other*
69 *facility in the public rights-of-way.*

70 *"Interactive on-demand services" means a service providing video programming to subscribers over*
71 *switched networks on an on-demand, point-to-point basis, but does not include services providing video*
72 *programming prescheduled by the programming provider.*

73 *"Gross revenue" means all revenue, as determined in accordance with generally accepted accounting*
74 *principles, that is actually received by the eligible video provider from the provision of cable service or*
75 *video service in the franchise area; however, gross revenue shall not include: (i) refunds or rebates*
76 *made to subscribers or other third parties; (ii) any revenue that is received from the sale of*
77 *merchandise over home shopping channels carried on the cable or video system, but not including*
78 *revenue received from home shopping channels for the use of the cable or video service to sell*
79 *merchandise; (iii) any tax, fee, or charge collected by the eligible video provider and remitted to a*
80 *governmental entity or its agent or designee, including without limitation a local public access or*
81 *education group; (iv) program launch fees not paid directly to the eligible video provider or cable*
82 *operator; (v) directory or Internet advertising revenue including, but not limited to, yellow page, white*
83 *page, banner advertisement, and electronic publishing; and (vi) a sale of cable service or video service*
84 *for resale or for use as a component part of or for the integration into cable services or video services*
85 *to be resold in the ordinary course of business, when the reseller is required to pay franchise fees on*
86 *the resale of the cable services or video services.*

87 *"Ordinance" includes a resolution.*

88 *"Public rights-of-way" means that portion of the public property including, without limitation, the*
89 *public ways, public places, streets, roads, paths, alleys, highways, waterways, bridges, public easements,*
90 *including without limitation those for the use of public utilities, waterfront, wharfs, public landings,*
91 *docks, parkways, or turnpikes, for which the eligible video provider has a previous consent to use or*
92 *acquires a consent to use.*

93 *"Public utility" has the meaning ascribed to such term in subdivision (b) of § 56-265.1.*

94 *"Transfer" means any transaction in which (i) an ownership or other interest in the eligible video*
95 *provider is transferred, directly or indirectly, from one person or group of persons to another person or*
96 *group of persons, so that majority control of the eligible video provider is transferred; or (ii) the rights*
97 *and obligations held by the eligible video provider under the franchise granted under this section are*
98 *transferred or assigned to another person or group of persons. However, notwithstanding clauses (i) and*
99 *(ii), a transfer of the franchise shall not include (a) a transfer of an ownership or other interest in the*
100 *eligible video provider to the parent of the eligible video provider or to another affiliate of the eligible*
101 *video provider; (b) a transfer of an interest in the franchise granted under this section or the rights held*
102 *by the eligible video provider under the franchise granted under this section to the parent of the eligible*
103 *video provider or to another affiliate of the eligible video provider; (c) any action that is the result of a*
104 *merger of the parent of the eligible video provider; (d) any action that is the result of a merger of*
105 *another affiliate of the eligible video provider; or (e) a transfer in trust, by mortgage, or by assignment*
106 *of any rights, title, or interest of the eligible video provider in the franchise or the system used to*
107 *provide cable or video service in order to secure indebtedness.*

108 *"Video programming" means programming provided by, or generally considered comparable to,*
109 *programming provided by a television broadcast station.*

110 *"Video service" means video programming services provided through wireline facilities located at*
111 *least in part in the public rights-of-way without regard to delivery technology, including Internet*
112 *protocol technology. "Video service" does not include any video programming provided by a commercial*
113 *mobile service provider defined in 47 U.S.C. § 332(d) or cable service.*

114 *"Video service provider" means a person authorized by this section to provide video service.*
115 *Notwithstanding any other provision of this section, a video service provider shall not be considered a*
116 *cable operator and the facilities of a video service provider shall not be considered a cable system.*

117 *B. A locality may grant a license or franchise, or issue a certificate of public convenience and*
118 *necessity to no more than one cable television system, and impose a fee thereon. However, a governing*
119 *body shall have the authority to award additional licenses, franchises or certificates of public*
120 *convenience as it deems appropriate, if such governing body finds that the public welfare will be*

enhanced by such awards after a public hearing at which testimony is heard concerning the economic consideration, the impact on private property rights, the impact on public convenience, the public need and potential benefit, and such other factors as are relevant.

C. No such governing body shall grant any overlapping licenses, franchises or certificates of public convenience for cable service within its jurisdiction on terms or conditions more favorable or less burdensome than those in any existing license, franchise or certificate of public convenience within such locality. The prohibitions of the foregoing sentence shall not apply when the area in which the overlapping license, franchise or certificate of public convenience is being sought, is not actually being served by any existing cable service provider holding a license, franchise or certificate of public convenience for such area. As used in this subsection, the term "actually being served" means that cable service is actually available to subscribers to such extent that the only act remaining in order to provide cable service is the physical connection to the individual subscriber location as of fifteen days prior to any subsequent application for a franchise.

D. The governing body may regulate such systems, including the establishment of fees and rates, the assignment of channels for public use, the operation of such channels assigned for public use, and the placement of restrictions or conditions on the scope of the business activities engaged in by such systems with regard to the sale, lease, rental or repair of television receivers or repair of video cassette and disc recorders and players, or provide for such regulation and operation by such agents as the governing body may direct. The owner or operator of any cable television system shall not be required to pay the cost of interconnecting such cable television systems between localities.

E. The grant of authority by this section to localities to regulate cable television systems, including regulations that displace or limit competition by or among persons owning or operating such systems, has been and continues to be based on the policy of the Commonwealth to provide for the adequate, economical, and efficient delivery of such systems to the consuming public, to protect the public from excessive prices and unfair competition, and to prevent the owners and operators of such systems from obtaining an unfair competitive advantage by reason of the license, franchise or certificate of convenience over businesses that sell, lease, rent or repair television receivers or repair video cassette and disc recorders and players. No locality may regulate cable television systems by regulations inconsistent with either laws of the Commonwealth or federal law relating to cable television operations.

F. Localities may by ordinance exercise all the regulatory powers over cable television systems granted by the Cable Television Consumer Protection and Competition Act of 1992 (P.L. 102-385, 1992). These regulatory powers shall include the authority (i) to enforce customer service standards in accordance with the Act, (ii) to enforce more stringent standards as agreed upon by the cable television system operator through the terms of the franchise, and (iii) to regulate the rates for basic cable service in accordance with the Act.

B. Notwithstanding any other provision of law, there are hereby established franchise procedures and standards authorizing the use of the public rights-of-way by eligible video providers to provide cable service and other video services. Upon compliance with the requirements of this section, the previous consent granted to an eligible video provider to use the public rights-of-way, by a franchise under which it continues to operate, shall be deemed a franchise authorizing use of the rights-of-way to provide cable service and other video services. Eligible video providers that comply with the requirements of this section are hereby granted a franchise that complies with Subchapter V-A of the Communications Act of 1934 (47 U.S.C. §§ 521-573), as amended, for a term of 15 years. The grant of a franchise or the renewal of a franchise pursuant to this section does not obligate an eligible video provider to provide cable service or any other video service throughout the locality or in any specific territory within the locality.

C. An eligible video provider electing to renew its 15-year franchise granted hereunder to be a provider of cable service or video services shall do so pursuant to the renewal procedures in 47 U.S.C. § 546.

D. A cable operator with a franchise to provide cable service may invoke this section and obtain the franchise granted herein at any time after receiving the consent of the governing body of the locality in which the cable operator is providing service. In considering whether to grant its consent, a governing body shall consider (i) whether there is effective competition with the cable operator in the provision of cable services, (ii) the extent to which the cable operator is in compliance with the terms of its existing franchise, (iii) whether it is commercially impracticable for the cable operator to comply with its existing franchise agreement under 47 U.S.C. § 545, and (iv) such other relevant factors as the governing body deems appropriate. After receiving the consent of the governing body, and certifying that the cable operator has complied with the requirements of this section, the cable operator shall immediately be granted a franchise as described herein for a term of 15 years. Localities may enforce the terms and conditions in existing franchise agreements and ordinances applicable to that cable operator's cable system until a cable operator has invoked this section and obtained a franchise

182 hereunder.

183 E. During the 6-month period that begins on the 36th month before the expiration of a cable
184 operator's cable franchise, a cable operator may submit a request to the local governing body to invoke
185 this section and obtain a franchise under this section if there is at least one eligible video provider
186 operating under a franchise granted pursuant to this section in the cable operator's franchise area. The
187 local governing body shall begin a proceeding in addition to any proceedings required by federal law,
188 to determine whether (i) there is effective competition with the cable operator in the provision of cable
189 services and (ii) it is commercially impracticable for the cable operator to comply with its existing
190 franchise agreement under 47 U.S.C. § 545. The locality shall not use a presumption either in favor of
191 or against either standard having been met in making its determination. If the governing body finds that
192 the standards of either clause (i) or clause (ii) have been met, then the cable operator may obtain a
193 franchise under this section rather than renew its franchise pursuant to the terms of 47 U.S.C. § 546. If
194 the governing body finds that the standards of clauses (i) and (ii) have each not been met, then the
195 cable operator may renew its franchise pursuant to 47 U.S.C. § 546.

196 F. In order to hold the franchise granted by this section, an eligible video provider shall file a
197 certification with the chief administrative officer of each locality for which it invokes the franchise
198 granted by this section. The certification shall be filed at least 30 days prior to offering cable service or
199 video service in the locality. The locality shall have not more than 120 days in which to pass any
200 ordinances required by this section that have not already been passed, but such additional ordinances
201 when passed shall apply to the eligible video provider retroactively to the date on which the eligible
202 video provider began to offer cable service or video service in the locality. The certification shall be
203 accompanied by a map showing the service area in which the eligible video provider intends to provide
204 cable service or video service in the locality. This service area map may be amended by the eligible
205 video provider by filing a new service area map with the locality. The certification shall be made by the
206 president or chief executive officer attesting that the eligible video provider shall:

207 1. Comply with those applicable mandatory requirements of 47 U.S.C. §§ 521-573;

208 2. Provide the locality with access to a number of public, educational, and governmental access
209 channels, equal to the number of such channels provided by any other cable operator in the same
210 franchise area of the locality. The locality or its designee shall assume responsibility for management,
211 operation, and programming of such channels. A locality that substantially utilizes its existing public,
212 educational, and governmental access channels may require a reasonable number of additional public,
213 educational, and governmental access channels by the enactment of an ordinance, after a public
214 hearing, so long as (i) the ordinance applies equally to all providers of cable service or video service
215 within a franchise area and (ii) the total number of additional public, educational, and governmental
216 access channels does not exceed 5 channels in the basic service tier. Notwithstanding the foregoing, but
217 consistent with federal law, the locality and an eligible video provider may enter into written
218 agreements for the carriage of additional public, educational, and governmental access channels,
219 including other arrangements for the carriage of such programming. Any additional public, educational,
220 and governmental access channel provided pursuant to this section that is not utilized by the locality for
221 at least eight hours a day shall no longer be made available to the locality, but may be programmed at
222 the eligible video provider's discretion. At such time as the locality can certify to the eligible video
223 provider a schedule for at least eight hours of daily programming, the eligible video provider shall
224 restore the previously lost channel. A public, educational, and governmental access channel shall be
225 considered to be substantially utilized when 12 hours are programmed on that channel each calendar
226 day. In addition, at least 40% of the 12 hours of programming for each business day on average over
227 each calendar quarter shall be nonrepeat programming. Nonrepeat programming shall include the first
228 three video-castings of a program and shall include programming on other public, educational, and
229 governmental access channels in that locality. Programming for purposes of determining substantial
230 utilization shall not include an alphanumeric scroll. A locality may require a cable operator or eligible
231 video provider to interconnect with another cable operator or eligible video provider to ensure the
232 carriage of required public, educational, and governmental access channels. Such interconnection shall
233 be at a mutually agreeable aggregation or, at the election of the eligible video provider, may be at the
234 origination source;

235 3. Not deny access to cable service or video service to any group of potential residential cable or
236 video subscribers because of the income of the residents of the local area in which such group resides;

237 4. Pay a franchise fee to each locality, remitted on the same schedule as the incumbent cable
238 provider but no more frequently than quarterly, calculated by multiplying a franchise fee percentage
239 rate by the eligible video provider's gross revenues in such locality for the remittance period; however,
240 the franchise fee rate shall (i) not exceed 5% of such gross revenues, (ii) not exceed the franchise fee
241 rate paid or provided by the incumbent cable operator, and (iii) be established by the locality by
242 ordinance. Such franchise fee payments shall be made to the locality no later than 45 days following the
243 end of the remittance period. Each franchise fee payment shall be submitted with a brief report

prepared by a duly authorized representative of the eligible video provider showing the basis for the computation. The locality shall have the right to reasonably require further supporting information that does not exceed the information required to be provided by other cable operators and eligible video providers;

5. If the eligible video provider offers cable service or video service and if an existing cable operator pays or has paid a capital grant or is providing in-kind services to support public, educational, and governmental channels, pay a fee to the locality to support the capital costs of public, educational, and governmental channels, including institutional networks, equivalent to 1% of the eligible video provider's gross revenues in that locality. A higher fee may be assessed by a locality by the enactment of an ordinance after a public hearing if the locality finds that a higher fee is needed to meet the community's future needs and interests in an institutional network and public, educational, and governmental access channels and if the ordinance applies equally to all providers of cable service and video service within a franchise area. The locality may assess this additional fee on a per subscriber basis or as a percentage of the eligible video provider's gross revenues in that franchise area. The fee shall be remitted on the same schedule as the franchise fee. The locality may permit one or more cable operators and eligible video providers to pay all or any part of such fees through a credit from the prospective provision of in-kind services such as, for example, the provision of a public access studio. All such credits shall be determined by the locality through the enactment of an ordinance after a public hearing; and

6. Comply with the customer service requirements imposed by the locality pursuant to 47 USC § 552 (a) (1) and this section through the adoption of an ordinance after a public hearing. Any customer service requirements imposed by the locality that exceed the requirements established by the Federal Communications Commission under 47 USC § 552 (b) shall (i) not be designed so that the eligible video provider cannot also comply with any other customer service requirements under state or federal law or regulation applicable to the eligible video provider in its provision of other services over the same network used to provide cable service or video service, (ii) be no more stringent than the customer service requirements applied to other cable operators in the franchise area, and (iii) be reasonably tailored to achieve appropriate customer service goals based on the technology used by the eligible video provider to provide cable service or video service.

G. Any ordinances enacted by a locality to regulate the provision of cable service or video service pursuant to this section shall promote the public interest through competitive offerings to its citizens, but may not unreasonably prejudice or disadvantage any cable operator or eligible video provider, whether an incumbent or a new applicant. If the ordinances contain terms that would unreasonably prejudice or disadvantage any cable operator or eligible video provider, whether an incumbent or a new applicant, then the locality shall make the necessary terms available to all cable operators and eligible video providers in the same franchise area.

H. An eligible video provider may identify as a separate line item on each regular bill of each subscriber (i) the amount of the total bill assessed as a franchise fee or equivalent and may identify the locality to which the fee is paid, (ii) the amount of the total bill assessed to satisfy any requirements imposed on the eligible video provider, including those to support public, educational, or governmental access facilities, including institutional networks, and (iii) the amount of any other fee, tax, assessment, or charge of any kind imposed by any governmental authority on the transaction between the eligible video provider and the subscriber.

I. To the extent that a franchised cable television operator has been authorized to use the public rights-of-way in a locality and is obligated to pay a franchise fee to such locality, such cable television operator shall not be subject to any occupancy, use, or similar fee, with respect to its use of such rights-of-way, by the locality or the Commonwealth Transportation Board except to the extent that such cable operator is also a certificated provider of telecommunications services and subject to the public rights-of-way use fee under § 56-468.1. The Commonwealth Transportation Board may charge, on a nondiscriminatory basis, fees to recover the approximate actual cost incurred for the issuance of a permit to perform work within the rights-of-way and for inspections to ensure compliance with the conditions of the permit, as such fees shall be established by regulations adopted under the Administrative Process Act; provided, however, such fees shall not apply to certificated providers of telecommunications services except to the extent permitted under §§56-458, 56-462, and 56-468.1. A locality may charge, on a nondiscriminatory basis, fees to recover the approximate actual cost incurred for the issuance of a permit to perform work within the rights-of-way and for inspections to ensure compliance with the conditions of the permit, as such fees existed on February 1, 1997, or as subsequently modified by ordinance; provided, however, such fees shall not apply to certificated providers of telecommunications services except to the extent permitted under §§56-458, 56-462, and 56-468.1. The limitation as to fees charged for the use of the public rights-of-way shall not be applicable to pole attachments and conduit occupancy agreements between a franchise cable television operator and a locality or its authority or

commission, which permits such operator to use the public poles or conduits. Except as provided in §§56-458, 56-462, and 56-468.1 and in any rules adopted by the Commonwealth Transportation Board under § 33.1-12, the franchise granted hereunder supersedes and replaces any and all other requirements and fees in local laws and the laws of the Commonwealth relating to the use of the public rights-of-way by a cable system or other facilities to provide video services, whether such other authorizations are designated as franchises, permits, consents, ordinances, or otherwise. No eligible video provider granted a franchise and paying fees pursuant to this section shall be required, in order to develop or operate a cable system or other facilities to provide video services, to (i) obtain consent in accordance with §§ 15.2-2015 through 15.2-2017, 56-458 or 56-462, except for permits or other permission to open streets and roads, or (ii) submit bids, bonds or applications in accordance with §§ 15.2-2100 through 15.2-2105, except for reasonable performance bonds not in excess of \$50,000. The restrictions in §§ 15.2-2015 through 15.2-2018, 15.2-2100 through 15.2-2105, 15.2-2106 and 15.2-2107, including but not limited to the advertisement and receipt of bids for franchises, shall not apply to a cable system or other facilities used to provide video services by an eligible video provider with a franchise granted hereunder.

J. No locality, without the consent of the franchisee, shall accelerate the term of, require the renegotiation of, or otherwise modify in any way, an agreement with any entity or a franchise, ordinance, permit, consent or other authorization for that entity to use the public rights-of-way due to the grant of a franchise under this section for that entity to use the public rights-of-way to develop and operate a cable system or other facilities to provide video services.

K. No transfer of the franchise granted by this section shall occur without the prior consent of the locality, provided that such consent shall not be unreasonably withheld, delayed or conditioned.

L. The locality in which an eligible video provider provides cable service or video service pursuant to the franchise granted in this section may:

1. Enforce the provisions of this section. In the event that the locality believes that an eligible video provider has not complied with this section, the locality shall informally discuss the matter with the eligible video provider. If these discussions do not lead to resolution of the problem, the locality shall notify the eligible video provider in writing of the exact nature of the alleged noncompliance. The eligible video provider shall have 30 days from receipt of this written notice to: (i) respond to the locality, if the eligible video provider contests, in whole or in part, the assertion of noncompliance; (ii) cure such default; or (iii) in the event that, by the nature of default, such default cannot be cured within the 30-day period, initiate reasonable steps to remedy such default and notify the locality of the steps being taken and the projected date that they will be completed. In the event that the eligible video provider fails to respond to the written notice pursuant to these procedures, or in the event that the alleged default is not remedied within 30 days or the date projected above, if it intends to continue its investigation into the default, then the locality shall schedule a public hearing. The locality shall provide the eligible video provider at least 30 business days prior written notice of such hearing, which will specify the time, place, and purpose of such hearing, and provide the eligible video provider the opportunity to be heard.

2. By ordinance after public hearing, adopt a schedule of administrative civil penalties that it may impose upon any eligible video provider that has been determined, as set forth above, to have failed to materially comply with (i) customer service standards, (ii) carriage of public, educational, and governmental channels, (iii) reporting requirements, and (iv) timely and full payment of the franchise fee or the fee assessed for the provision of public, educational, or governmental access, all as set forth in this section, so long as such penalties do not exceed the maximum damages or penalties established for such violations by any other provider of cable service or video service in the same franchise area and so long as the eligible video provider has been afforded a reasonable cure period between the time the eligible video provider is notified of the violation and the penalty is imposed. A separate violation for purposes of this section and the ordinances passed to implement this section as it pertains to customer service standards shall be deemed to occur whenever the locality reasonably determines that a separate customer service standard violation has occurred on one day; however, the eligible video provider shall not be charged with multiple violations for a single act or event affecting one or more subscribers on the same day.

3. Inspect and audit upon 30 days prior written notice the books and records of the eligible video provider and recompute any amounts determined to be payable under this section. The eligible video provider shall make available to the locality all records reasonably necessary to confirm the accurate payment of fees. The locality's audit expenses shall be borne by the locality unless the audit discloses an underpayment of more than 3% of any quarterly payment, but not less than \$5,000, in which case the locality's reasonable out-of-pocket costs of the audit shall be borne by the eligible video provider. Any additional undisputed amounts due to the locality as a result of the audit shall be paid within 30 days following written notice by the locality to the eligible video provider. In the event the eligible video provider disputes any underpayment discovered as the result of an audit conducted by the locality, the

eligible video provider and the locality shall work together in good faith to promptly resolve such dispute. The eligible video provider and the locality shall maintain all rights and remedies available at law regarding any disputed amounts. The locality shall have three years from the time the eligible video provider delivers a payment to provide a written, detailed objection to or dispute of that payment, and if the locality fails to object to or dispute the payment within that time period, the locality shall be barred from objecting to or disputing it after that time period. No locality shall audit an eligible video provider more frequently than every 24 months.

4. By ordinance after public hearing, adopt reasonable reporting requirements for annual financial information and quarterly customer service information that shall be provided by an eligible video provider to the locality so long as such information does not exceed the reporting requirements for any other provider of cable service or video service in the same franchise area.

M. The grant of authority by this section to localities to regulate cable systems or other facilities to provide video services has been and continues to be based on the policy of the Commonwealth to provide for the adequate, economical, and efficient delivery of such systems to the consuming public, and to promote and encourage competition among providers and to protect the public from excessive prices in the absence of competition. No locality may regulate cable systems or other facilities to provide video services by regulations inconsistent with either this section or federal law.

N. If cable services or video services subject to a franchise fee, or any other fee determined by a percentage of the eligible video provider's gross revenues in a locality, are provided to subscribers in conjunction with other services, the fee shall be applied only to the value of these cable services or video services, as reflected on the books and records of the eligible video provider in accordance with Federal Communications Commission or state public utility regulatory commission rules, regulations, standards, or orders, or generally accepted accounting principles. Any discounts resulting from purchasing the services as a bundle shall be reasonably allocated between the respective services that constitute the bundled transaction.

O. A locality may by ordinance require eligible video providers to provide, without charge within the area actually served by the eligible video provider, one cable service or video service outlet activated for basic cable service or video service to each fire station, public school, police station, public library, and other local government buildings. The ordinance shall apply equally to all providers of cable services or video services in the locality.

P. Each cable operator and eligible video provider involved in such an interconnection arrangement shall bear a reasonable share of the related interconnection costs. If the cable operator and the eligible video provider cannot agree to an interconnection agreement within 180 days of a request to interconnect, then the locality is authorized to set reasonable and efficient terms of interconnection, including the sharing of costs.

Q. A locality may grant or renew a franchise in accordance with Subchapter V-A of the Communications Act of 1934 (47 U.S.C. §§ 521-573), as amended, and this article for any person that does not apply under this section as an eligible video provider, including but not limited to the expressed authority of the locality to impose fees. When granting a franchise to provide cable or video services under this section, a locality shall seek to promote the public interest through competitive offerings to its citizens and to ensure terms and conditions that do not unreasonably prejudice or disadvantage any cable operator or eligible video provider, whether an incumbent or a new applicant. If any franchise negotiated between the locality and an applicant under this section contains terms that would unreasonably prejudice or disadvantage any cable operator or eligible video provider, whether an incumbent or a new applicant, then the locality shall make the necessary terms available to all cable operators and eligible video providers in the same franchise area.

R. References in this section to federal law shall include amendments as are enacted from time to time.