

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 1559*
Commerce Committee Substitute Adopted 6/13/06

Short Title: Video Service Competition Act.

(Public)

Sponsors:

Referred to:

May 18, 2006

1 A BILL TO BE ENTITLED
2 AN ACT TO PROMOTE CONSUMER CHOICE IN VIDEO SERVICE PROVIDERS
3 AND TO ESTABLISH UNIFORM TAXES FOR VIDEO PROGRAMMING
4 SERVICES.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Chapter 66 of the General Statutes is amended by adding a
7 new Article to read:

8 "Article 42.

9 "State Franchise for Cable Television Service.

10 "**§ 66-350. Definitions.**

11 The following definitions apply in this Article:

12 (1) Cable service. – Defined in G.S. 105-164.3.

13 (2) Cable system. – Defined in 47 U.S.C. § 522.

14 (3) Channel. – A portion of the electromagnetic frequency spectrum that is
15 used in a cable system and is capable of delivering a television
16 channel.

17 (4) Existing agreement. – A local franchise agreement that was awarded
18 under G.S. 153A-137 or G.S. 160A-319 and meets either of the
19 following:

20 a. Is in effect on January 1, 2007.

21 b. Expired before January 1, 2007, and the cable service provider
22 under the agreement provides cable service to subscribers in the
23 franchise area on January 1, 2007.

24 (5) Pass a household. – Make service available to a household, regardless
25 of whether the household subscribes to the service.

26 (6) PEG channel. – A public, educational, or governmental access channel
27 provided to a county or city.

28 (7) Secretary. – The Secretary of State.

29 "**§ 66-351. State franchising authority.**

1 (a) Authority. – The Secretary of State is designated the exclusive franchising
2 authority in this State for cable service provided over a cable system. This designation
3 replaces the authorization to counties and cities in former G.S. 153A-137 and
4 G.S. 160A-319 to award a franchise for cable service. This designation is effective
5 January 1, 2007. After this date, a county or city may not award or renew a franchise for
6 cable service.

7 (b) Award and Scope. – The Secretary is considered to have awarded a franchise
8 to a person who files a notice of franchise under G.S. 66-352. A franchise for cable
9 service authorizes the holder of the franchise to construct and operate a cable system
10 over public rights-of-way within the area to be served. Chapter 160A of the General
11 Statutes governs the regulation of public rights-of-way by a city.

12 **"§ 66-352. Award of franchise and commencement of service.**

13 (a) Notice of Franchise. – A person who intends to provide cable service over a
14 cable system in an area must file a notice of franchise with the Secretary before
15 providing the service. A person who files a notice of franchise must pay a fee in the
16 amount set in G.S. 57C-1-22 for filing articles of organization.

17 A notice of franchise is effective when it is filed with the Secretary. The notice of
18 franchise must include all of the following:

- 19 (1) The applicant's name, principal place of business, mailing address,
20 physical address, telephone number, and e-mail address.
- 21 (2) A description and map of the area to be served.
- 22 (3) A list of each county and city in which the described service area is
23 located, in whole or in part.
- 24 (4) A schedule indicating when service is expected to be offered in the
25 service area.

26 (b) Commencement of Service. – A person who files a notice of franchise under
27 subsection (a) of this section must begin providing cable service in the service area
28 described in the notice within 120 days after the notice is filed. If cable service does not
29 begin within this period, the notice of franchise terminates 130 days after it was filed. If
30 cable service begins within this period, the holder of the State-issued franchise must file
31 a notice of service with the Secretary within 10 days after the cable service begins.
32 Cable service begins when it passes one or more households in the described service
33 area. This subsection does not apply to a cable service provider who terminates an
34 existing agreement whose franchise area includes all of the service area described in a
35 notice of franchise filed by the provider under subsection (a) of this section.

36 A notice of service for a service area must include all of the following:

- 37 (1) The effective date of a notice of franchise for that area.
- 38 (2) A description and map of the service area.
- 39 (3) A statement that cable service has begun in the service area.

40 (c) Extension. – A person who intends to provide cable service over a cable
41 system in an area that is contiguous with but outside the service area described in a
42 notice of franchise on file with the Secretary must file a notice of franchise under
43 subsection (a) of this section that includes the proposed area. The initial service
44 requirements in subsection (b) of this section apply to the proposed area. If the map of

1 the area to be served includes any area that is part of the service area of another
2 State-issued franchise, the termination of a notice of franchise for the proposed area for
3 failure to begin service within the required time does not affect the status of the other
4 State-issued franchise.

5 (d) Withdrawal. – A person may withdraw a notice of franchise by filing a notice
6 of withdrawal with the Secretary. The notice of withdrawal must be filed at least 90
7 days before the service is withdrawn.

8 **"§ 66-353. Annual service report.**

9 A holder of a State-issued franchise must file an annual service report with the
10 Secretary. The report must be filed on or before July 31 of each year. The report must
11 be accompanied by a fee in the amount set in G.S. 57C-1-22 for filing an annual report.
12 The report must include all of the following:

13 (1) The effective date of a notice of franchise for that area.

14 (2) A description and map of the service area.

15 (3) The approximate number of households in the service area.

16 (4) A description and a map of the households passed in the service area
17 as of July 1.

18 (5) The percentage of households passed in the service area as of July 1.

19 (6) The percentage of households passed in the service area as of July 1 of
20 any preceding year for which a report was required under this section.

21 (7) A report indicating the extent to which the holder has met the customer
22 service requirements under G.S. 66-356(b).

23 (8) A schedule indicating when service is expected to be offered in the
24 service area, to the extent the schedule differs from one included in the
25 notice of franchise or in a report previously submitted under this
26 section, and an explanation of the reason for the new schedule.

27 **"§ 66-354. General filing and report requirements.**

28 (a) General. – A document filed with the Secretary under this Article must be signed
29 by an officer or general partner of the person submitting the document. Within five days
30 after a person files a document with the Secretary under this Article, the person must
31 send a copy of the document to any county or city included in the service area described
32 in the document and to the registered agent of any cable service provider that is
33 providing cable service under an existing agreement in the service area described in the
34 document.

35 The provisions of Article 2 of Chapter 55D of the General Statutes apply to the
36 submission of a document under this Article. A document filed under this Article is a
37 public record as defined in G.S. 132-1. The Secretary must post a document filed under
38 this Article on its Internet Web site or indicate on its Internet Web site that the
39 document has been filed and is available for inspection.

40 A successor in interest to a person who has filed a notice of franchise is not required
41 to file another notice of franchise. When a change in ownership occurs, the owner must
42 file a notice of change in ownership with the Secretary within 14 days after the change
43 becomes effective.

1 (b) Forfeiture. – A person who offers cable service over a cable system without
2 filing a notice of franchise or a notice of service as required by this Article is subject to
3 forfeiture of the revenue received during the period of noncompliance from subscribers
4 to the cable service. This forfeiture does not affect the liability of the cable service
5 provider for sales tax due under G.S. 105-164.4 on cable service. A cable service
6 provider whose area includes the area in which a person is providing cable service
7 without complying with the notice of franchise and notice of service requirements may
8 bring a civil action for forfeiture. The amount required to be forfeited in the action must
9 be remitted to the Civil Penalty and Forfeiture Fund established in G.S. 115C-457.2.

10 **"§ 66-355. Effect on existing local franchise agreement.**

11 (a) Existing Agreement. – This Article does not affect an existing agreement
12 except as follows:

13 (1) Effective January 1, 2007, gross revenue used to calculate the payment
14 of the franchise tax imposed by G.S. 153A-154 or G.S. 160A-214 does
15 not include gross receipts from cable service subject to sales tax under
16 G.S. 105-164.4. This exclusion does not otherwise affect the
17 calculation of gross revenue and the payment to counties and cities of
18 franchise tax revenue under existing agreements that have not been
19 terminated under subsection (b) of this section.

20 (2) A cable service provider under an existing agreement may terminate
21 the agreement in accordance with subsection (b) of this section in any
22 of the following circumstances:

23 a. A notice of service filed under G.S. 66-352 indicates that one or
24 more households in the franchise area of the existing agreement
25 are passed by both the cable service provider under the existing
26 agreement and the holder of a State-issued franchise.

27 b. As of January 1, 2007, a county or city has an existing
28 agreement with more than one cable service provider and at
29 least twenty-five percent (25%) of the households in the
30 franchise areas of the existing agreements are passed by more
31 than one cable service provider.

32 c. A person provides wireline competition in the franchise area of
33 the existing agreement by offering video programming, as
34 defined in G.S. 105-164.3, over wireline facilities by a method
35 that does not require a franchise under this Article. A notice of
36 termination filed on the basis of wireline competition must
37 include evidence of the competition in providing video
38 programming service, such as an advertisement announcing the
39 availability of the service, the acceptance of an order for the
40 service, and information on the provider's Web site about the
41 availability of the service. A county or city is allowed 60 days
42 to review the evidence. The effective date of the termination is
43 tolled during this review period. At the end of this period, the
44 termination proceeds unless the county or city brings a civil

1 action to stay the termination based on the cable service
2 provider's failure to establish the existence of wireline
3 competition in its franchise area.

4 (b) Termination. – To terminate an existing agreement, a cable service provider
5 must file a notice of termination with the affected county or city and file a notice of
6 franchise with the Secretary. A termination of an existing agreement becomes effective
7 at the end of the month in which the notice of termination is filed with the affected
8 county or city. A termination of an existing agreement ends the obligations under the
9 agreement and under any local cable regulatory ordinance that specifically authorizes
10 the agreement as of the effective date of the termination but does not affect the rights or
11 liabilities of the county or city, a taxpayer, or another person arising under the existing
12 agreement or local ordinance before the effective date of the termination.

13 **"§ 66-356. Service standards and requirements.**

14 (a) Discrimination Prohibited. – A person who provides cable service over a
15 cable system may not deny access to the service to any group of potential residential
16 subscribers within the filed service area because of the race or income of the residents.
17 A violation of this subsection is considered an unfair or deceptive act or practice under
18 G.S. 75-1.1.

19 In determining whether a cable service provider has violated this subsection with
20 respect to a group of potential residential subscribers in a service area, the following
21 factors must be considered:

- 22 (1) The length of time since the provider filed the notice of service for the
23 area. If less than a year has elapsed since the notice of service was
24 filed, it is conclusively presumed that a violation has not occurred.
- 25 (2) The cost of providing service to the affected group due to distance
26 from facilities, density, or other factors.
- 27 (3) Technological impediments to providing service to the affected group.
- 28 (4) Inability to obtain access to property required to provide service to the
29 affected group.
- 30 (5) Competitive pressure to respond to service offered by another cable
31 service provider.

32 (b) FCC Standards. – A person who provides cable service over a cable system
33 must comply with the customer service requirements in 47 C.F.R. Part 76 and
34 emergency alert requirements established by the Federal Communications Commission.

35 (c) Complaints. – The Consumer Protection Division of the Attorney General's
36 Office is designated as the State agency to receive and respond to customer complaints
37 concerning cable services. Persistent or repeated violations of the federal customer
38 service requirements or the terms and conditions of the cable service provider's
39 agreement with customers are considered unfair or deceptive acts or practices under
40 G.S. 75-1.1.

41 To facilitate the resolution of customer complaints, the cable service provider must
42 include the following statement on the customer's bill: "If you have a complaint about
43 your cable service, you should first contact customer service at the following telephone
44 number: (insert the cable service provider's customer service telephone number). If the

1 cable service provider does not satisfactorily resolve your complaint, contact the
2 Consumer Protection Division of the Attorney General's Office of the State of North
3 Carolina at 9001 Mail Service Center, Raleigh, NC 27699-9001, at www.ncdoj.com, or
4 at 1-877-5-NO-SCAM.

5 (d) No Build-Out. – No build-out requirements apply to a person who provides
6 cable service under a State-issued franchise.

7 **"§ 66-357. Availability and use of PEG channels.**

8 (a) Application. – This section applies to a person who provides cable service
9 under a State-issued franchise. It does not apply to a person who provides cable service
10 under an existing agreement.

11 (b) Local Request. – A county or city must make a written request to a cable
12 service provider for PEG channel capacity. The request must include a statement
13 describing the county's or city's plan to operate and program each channel requested.
14 The cable service provider must provide the requested PEG channel capacity within 120
15 days after it receives the written request.

16 (c) Initial PEG Channels. – A city with a population of at least 50,000 is allowed
17 a minimum of three initial PEG channels plus any channels in excess of this minimum
18 that are activated, as of July 1, 2006, under the terms of an existing franchise agreement
19 whose franchise area includes the city. A city with a population of less than 50,000 is
20 allowed a minimum of two initial PEG channels plus any channels in excess of this
21 minimum that are activated, as of July 1, 2006, under the terms of an existing franchise
22 agreement whose franchise area includes the city. For a city included in the franchise
23 area of an existing agreement, the agreement determines the service tier placement and
24 transmission quality of the initial PEG channels. For a city that is not included in the
25 franchise area of an existing agreement, the initial PEG channels must be on a basic
26 service tier, and the transmission quality of the channels must be equivalent to those of
27 the closest city covered by an existing agreement.

28 A county is allowed a minimum of two initial PEG channels plus any channels in
29 excess of this minimum that are activated, as of July 1, 2006, under the terms of an
30 existing franchise agreement whose franchise area includes the county. For a county
31 included in the franchise area of an existing agreement, the agreement determines the
32 service tier placement and transmission quality of the initial PEG channels. For a county
33 that is not included in the franchise area of an existing agreement, the initial PEG
34 channels must be on a basic service tier and the transmission quality of the channels
35 must be equivalent to those of any city with PEG channels in the county.

36 The cable service provider must maintain the same channel designation for a PEG
37 channel unless the service area of the State-issued franchise includes PEG channels that
38 are operated by different counties or cities and those PEG channels have the same
39 channel designation. Each county and city whose PEG channels are served by the same
40 cable system headend must cooperate with each other and with the cable system
41 provider in sharing the capacity needed to provide the PEG channels.

42 (d) Additional PEG Channels. – A county or city that does not have seven PEG
43 channels, including the initial PEG channels, is eligible for an additional PEG channel if

1 it meets the programming requirements in this subsection. A county or city that has
2 seven PEG channels is not eligible for an additional channel.

3 A county or city that meets the programming requirements in this subsection may
4 make a written request under subsection (b) of this section for an additional channel.
5 The additional channel may be provided on any service tier. The transmission quality of
6 the additional channel must be at least equivalent to the transmission quality of the other
7 channels provided.

8 The PEG channels operated by a county or city must meet the following
9 programming requirements for at least 120 continuous days in order for the county or
10 city to obtain an additional channel:

11 (1) All of the PEG channels must have scheduled programming for at least
12 eight hours a day.

13 (2) The programming content of each of the PEG channels must not repeat
14 more than fifteen percent (15%) of the programming content on any of
15 the other PEG channels.

16 (3) No more than fifteen percent (15%) of the programming content on
17 any of the PEG channels may be character-generated programming.

18 (e) Use of Channels. – If a county or city no longer provides any programming
19 for transmission over a PEG channel it has activated, the channel may be reprogrammed
20 at the cable service provider's discretion. A cable service provider must give at least 60
21 days notice to a county or city before it reprograms a PEG channel that is not used. The
22 cable service provider must restore a previously lost PEG channel within 120 days of
23 the date a county or city certifies to the provider a schedule that demonstrates the
24 channel will be used.

25 (f) Operation of Channels. – A cable service provider is responsible only for the
26 transmission of a PEG channel. The county or city to which the PEG channel is
27 provided is responsible for the operation and content of the channel. A county or city
28 that provides content to a cable service provider for transmission on a PEG channel is
29 considered to have authorized the provider to transmit the content throughout the
30 provider's service area, regardless of whether part of the service area is outside the
31 boundaries of the county or city.

32 All programming on a PEG channel must be noncommercial. A cable service
33 provider may not brand content on a PEG channel with its logo, name, or other
34 identifying marks. A cable service provider is not required to transmit content on a PEG
35 channel that is branded with the logo, name, or other identifying marks of another cable
36 service provider.

37 **"§ 66-358. Transmission of PEG channels.**

38 (a) Service. – When a cable service provider operating under a State-issued
39 franchise begins providing cable service in an area, the service must include the
40 transmission of PEG channels by one of the following methods:

41 (1) Interconnection with another cable system operated in its service area.
42 A cable service provider operating in the same service area as a
43 provider under a State-issued franchise must interconnect its cable
44 system on reasonable and competitively neutral terms with the other

1 provider's cable system when it receives a written request for
2 interconnection and may not refuse to interconnect on these terms. The
3 terms include compensation for costs incurred in interconnecting.
4 Interconnection may be accomplished by direct cable, microwave link,
5 satellite, or another method of connection.

6 (2) Transmission of the signal from each PEG channel programmer's
7 origination site, if the origination site is in the provider's service area.

8 (b) Signal. – All PEG channel programming provided to a cable service provider
9 for transmission must meet the federal National Television System Committee standards
10 or the Advanced Television Systems Committee Standards. If a PEG channel
11 programmer complies with these standards and the cable service provider cannot
12 transmit the programming without altering the transmission signal, then the cable
13 service provider must do one of the following:

14 (1) Alter the transmission signal to make it compatible with the
15 technology or protocol the cable service provider uses to deliver its
16 cable service.

17 (2) Provide to the county or city the equipment needed to alter the
18 transmission signal to make it compatible with the technology or
19 protocol the cable service provider uses to deliver its cable service.

20 **"§ 66-359. PEG channel grants.**

21 (a) PEG Channel Fund. – The PEG Channel Fund is created as an
22 interest-bearing special revenue fund. It consists of revenue allocated to it under
23 G.S. 105-164.44I(b) and any other revenues appropriated to it. The e-NC Authority,
24 created under G.S. 143B-437.46, administers the Fund.

25 (b) Grants. – A county or city may apply to the e-NC Authority for a grant from
26 the PEG Channel Fund. In awarding grants from the Fund, the e-NC Authority must to
27 the extent possible select applicants from all parts of the State based upon need. Grants
28 from the Fund are subject to the following limitations:

29 (1) The grant may not exceed twenty-five thousand dollars (\$25,000).

30 (2) The applicant must match the grant on a dollar-for-dollar basis.

31 (3) The grant may be used only for capital expenditures necessary to
32 provide PEG channel programming.

33 (4) An applicant may receive no more than one grant per fiscal year.

34 (c) Reports. – The e-NC Authority must publish an annual report on grants
35 awarded under this section. The report must list each grant recipient, the amount of the
36 grant, and the purpose of the grant.

37 **"§ 66-360. Service to public building.**

38 At the written request of a county or city, a cable service provider operating under a
39 State-issued franchise must provide cable service without charge to a public building
40 located within 125 feet of the provider's cable system. The required service is the basic,
41 or lowest-priced, service the provider offers to customers. The terms and conditions that
42 apply to service provided to a residential retail customer apply to the service provided to
43 the public building. Only one service outlet is required for a building. The cable service
44 provider is not required to provide inside wiring and is not required to provide service

1 that conflicts with restrictions that apply in a program licensing agreement or another
2 contract. A public building is a building used as a public school, a charter school, a
3 county or city library, or a function of the county or city."

4 **SECTION 2.** G.S. 105-164.3 is amended by adding a new subdivision to
5 read:

6 "**§ 105-164.3. Definitions.**

7 The following definitions apply in this Article:

8 ...

9 (50c) Video programming. – Programming provided by, or generally
10 considered comparable to programming provided by, a television
11 broadcast station, regardless of the method of delivery."

12 **SECTION 3.** G.S. 105-164.4(a)(6) reads as rewritten:

13 "(6) The combined general rate applies to the gross receipts derived from
14 providing ~~any of the following broadcast services~~ video programming
15 to a subscriber in this State. A cable service provider, a direct-to-home
16 satellite service provider, and any other person engaged in the business
17 of providing any of these services video programming is considered a
18 retailer under this ~~Article~~ Article.

19 a. ~~Direct to home satellite service.~~

20 b. ~~Cable service."~~

21 **SECTION 4.** G.S. 105-164.4C(d) is recodified as G.S. 105-164.4D with the
22 catch line "Bundled services."

23 **SECTION 5.** G.S. 105-164.4D, as recodified by Section 4 of this act, reads
24 as rewritten:

25 "**§ 105-164.4D. Bundled services.**

26 ~~Bundled Services.~~—When a taxable ~~telecommunications~~ service is bundled with a
27 service that is not taxable, the tax applies to the gross receipts from the taxable service
28 in the bundle as follows:

29 (1) If the service provider offers all the services in the bundle on an
30 unbundled basis, tax is due on the unbundled price of the taxable
31 service, less the discount resulting from the bundling. The discount for
32 a service as the result of bundling is the proportionate price decrease of
33 the service, determined on the basis of the total unbundled price of all
34 the services in the bundle compared to the bundled price of the
35 services.

36 (2) If the service provider does not offer one or more of the services in the
37 bundle on an unbundled basis, tax is due on the taxable service based
38 on a reasonable allocation of revenue to that service. If the service
39 provider maintains an account for revenue from a taxable service, the
40 service provider's allocation of revenue to that service for the purpose
41 of determining the tax due on the service must reflect its accounting
42 allocation of revenue to that service."

43 **SECTION 6.** The catch line to G.S. 105-164.12B reads as rewritten:

1 **"§ 105-164.12B. Bundled transactions. Tangible personal property bundled with**
2 **service contract."**

3 **SECTION 7.** G.S. 105-164.44F(a) reads as rewritten:

4 "(a) Amount. – The Secretary must distribute ~~to the cities~~ part of the taxes
5 imposed by G.S. 105-164.4(a)(4c) on telecommunications service. The Secretary must
6 make the distribution within 75 days after the end of each calendar quarter. The amount
7 the Secretary must distribute is ~~eighteen and three one hundredths percent (18.03%)~~ the
8 following percentages of the net proceeds of the taxes collected during the ~~quarter,~~
9 quarter:

10 (1) Eighteen and three one-hundredths percent (18.03%), minus two
11 million six hundred twenty thousand nine hundred forty-eight dollars
12 (\$2,620,948).(\$2,620,948), must be distributed to cities in accordance
13 with this section. ~~This~~ The deduction is one-fourth of the annual
14 amount by which the distribution to cities of the gross receipts
15 franchise tax on telephone companies, imposed by former G.S. 105-20,
16 was required to be reduced beginning in fiscal year 1995-96 as a result
17 of the "freeze deduction." ~~The Secretary must distribute the specified~~
18 ~~percentage of the proceeds, less the "freeze deduction" among the~~
19 ~~cities in accordance with this section.~~

20 (2) Seven and twenty-three one-hundredths percent (7.23%) must be
21 distributed to counties and cities as provided in G.S. 105-164.44I."

22 **SECTION 8.** Article 5 of Chapter 105 of the General Statutes is amended by
23 adding a new section to read:

24 **"§ 105-164.44I. Distribution of part of sales tax on video programming service and**
25 **telecommunications service to counties and cities.**

26 (a) Distribution. – The Secretary must distribute to the counties and cities part of
27 the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service and
28 G.S. 105-164.4(a)(6) on video programming service. The Secretary must make the
29 distribution within 75 days after the end of each calendar quarter. The amount the
30 Secretary must distribute is the sum of the revenue listed in this subsection. The
31 Secretary must distribute two million dollars (\$2,000,000) of this amount in accordance
32 with subsection (b) of this section and the remainder in accordance with subsections (c)
33 and (d) of this section. The revenue to be distributed under this section consists of the
34 following:

35 (1) The amount specified in G.S. 105-164.44F(a)(2).

36 (2) Twenty-two and sixty-one one-hundredths percent (22.61%) of the net
37 proceeds of the taxes collected during the quarter on video
38 programming, other than on direct-to-home satellite service.

39 (3) Thirty-seven percent (37%) of the net proceeds of the taxes collected
40 during the quarter on direct-to-home satellite service.

41 (b) Supplemental PEG Support. – The Secretary must include the applicable
42 amount of supplemental PEG channel support in each quarterly distribution to a county
43 or city. The amount to include is one-fourth of twenty-five thousand dollars (\$25,000)
44 for each qualifying PEG channel operated by the county or city. The amount of money

1 distributed under this subsection may not exceed two million dollars (\$2,000,000) in a
2 fiscal year. If the amount to be distributed for qualifying PEG channels in a fiscal year
3 would otherwise exceed this maximum amount, the Secretary must proportionately
4 reduce the applicable amount distributable for each PEG channel. If the amount to be
5 distributed for qualifying PEG channels in a fiscal year is less than two million dollars
6 (\$2,000,000), the Secretary must credit the excess amount to the PEG Channel Fund,
7 established in G.S. 66-359.

8 A county or city must certify to the Secretary by July 15 of each year the number of
9 qualifying PEG channels it operates. A qualifying PEG channel is one that meets the
10 programming requirements under G.S. 66-357(d). A county or city may not receive
11 PEG channel support under this subsection for more than three qualifying PEG
12 channels.

13 The amount included under this subsection in a distribution to a county or city is
14 intended to supplement the PEG channel support available in the amount distributed
15 under this section. The money distributed to a county or city under this subsection must
16 be used by it for the operation and support of PEG channels. For purposes of this
17 subsection, the term "PEG channel" has the same meaning as in G.S. 66-350.

18 (c) 2006-2007 Fiscal Year Distribution. – The share of a county or city is its
19 proportionate share of the amount to be distributed to all counties and cities under this
20 subsection. The proportionate share of a county or city is the base amount for the county
21 or city compared to the base amount for all other counties and cities. The base amount
22 of a county or city that did not impose a cable franchise tax under G.S. 153A-154 or
23 G.S. 160A-214 before July 1, 2006, is two dollars (\$2.00) times the most recent annual
24 population estimate for that county or city. The base amount of a county or city that
25 imposed a cable franchise tax under either G.S. 153A-154 or G.S. 160A-214 before July
26 1, 2006, is the amount of cable franchise tax and subscriber fee revenue the county or
27 city certifies to the Secretary that it imposed during the first six months of the
28 2006-2007 fiscal year. A county or city must make this certification by January 15,
29 2007. The certification must specify the amount of revenue that is derived from the
30 cable franchise tax and the amount that is derived from the subscriber fee.

31 (d) Subsequent Distributions. – For subsequent fiscal years, the Secretary must
32 multiply the amount of a county's or city's share under this section for the preceding
33 fiscal year by the percentage change in its population for that fiscal year and add the
34 result to the county's or city's share for the preceding fiscal year to obtain the county's or
35 city's adjusted amount. Each county's or city's proportionate share for that year is its
36 adjusted amount compared to the sum of the adjusted amounts for all counties and
37 cities.

38 (e) Use of Proceeds. – A county or city that imposed subscriber fees during the
39 first six months of the 2006-2007 fiscal year must use a portion of the funds distributed
40 to it under subsections (c) and (d) of this section for the operation and support of PEG
41 channels. The amount of funds that must be used for PEG channel operation and
42 support is two times the amount of subscriber fee revenue the county or city certified to
43 the Secretary that it imposed during the first six months of the 2006-2007 fiscal year.
44 The remainder of the distribution may be used for any public purpose.

1 (f) Late Information. – A county or city that does not submit information that the
2 Secretary needs to make a distribution by the date the information is due is excluded
3 from the distribution. If the county or city later submits the required information, the
4 Secretary must include the county or city in the distribution for the quarter that begins
5 after the date the information is received.

6 (g) Population Determination. – In making population determinations under this
7 section, the Secretary must use the most recent annual population estimates certified to
8 the Secretary by the State Budget Officer. For purposes of the distributions made under
9 this section, the population of a county is the population of its unincorporated areas plus
10 the population of an ineligible city in the county, as determined under subsection (g) of
11 this section.

12 (h) City Changes. – The following changes apply when a city alters its corporate
13 structure or incorporates:

14 (1) If a city dissolves and is no longer incorporated, the proportional
15 shares of the remaining counties and cities must be recalculated to
16 adjust for the dissolution of that city.

17 (2) If two or more cities merge or otherwise consolidate, their proportional
18 shares are combined.

19 (3) If a city divides into two or more cities, the proportional share of the
20 city that divides is allocated among the new cities on a per capita basis.

21 (4) If a city incorporates after January 1, 2007, and the incorporation is not
22 addressed by subdivisions (2) or (3) of this subsection, the share of the
23 county in which the new city is located is allocated between the county
24 and the new city on a per capita basis.

25 (i) Ineligible Cities. – An ineligible city is disregarded for all purposes under this
26 section. A city incorporated on or after January 1, 2000, is not eligible for a distribution
27 under this section unless it meets both of the following requirements:

28 (1) It is eligible to receive funds under G.S. 136-41.2.

29 (2) A majority of the mileage of its streets is open to the public.

30 (j) Nature. – The General Assembly finds that the revenue distributed under this
31 section is local revenue, not a State expenditure, for the purpose of Section 5(3) of
32 Article III of the North Carolina Constitution. Therefore, the Governor may not reduce
33 or withhold the distribution."

34 **SECTION 9.** G.S. 105-164.21B is repealed.

35 **SECTION 10.** G.S. 153A-137 is repealed.

36 **SECTION 11.** G.S. 153A-154 is repealed.

37 **SECTION 12.** G.S. 160A-211 reads as rewritten:

38 "**§ 160A-211. Privilege license taxes.**

39 (a) Authority. – Except as otherwise provided by law, a city shall have power to
40 levy privilege license taxes on all trades, occupations, professions, businesses, and
41 franchises carried on within the city. A city may levy privilege license taxes on the
42 businesses that were formerly taxed by the State under the following sections of Article
43 2 of Chapter 105 of the General Statutes only to the extent the sections authorized cities
44 to tax the businesses before the sections were repealed:

1		
2	G.S. 105-36	Amusements – Manufacturing, selling, leasing, or
3		distributing moving picture films.
4	G.S. 105-36.1	Amusements – Outdoor theatres.
5	G.S. 105-37	Amusements – Moving pictures – Admission.
6	G.S. 105-42	Private detectives and investigators.
7	G.S. 105-45	Collecting agencies.
8	G.S. 105-46	Undertakers and retail dealers in coffins.
9	G.S. 105-50	Pawnbrokers.
10	G.S. 105-51.1	Alarm systems.
11	G.S. 105-53	Peddlers, itinerant merchants, and specialty market
12		operators.
13	G.S. 105-54	Contractors and construction companies.
14	G.S. 105-55	Installing elevators and automatic sprinkler systems.
15	G.S. 105-61	Hotels, motels, tourist courts and tourist homes.
16	G.S. 105-62	Restaurants.
17	G.S. 105-65	Music machines.
18	G.S. 105-65.1	Merchandising dispensers and weighing machines.
19	G.S. 105-66.1	Electronic video games.
20	G.S. 105-74	Pressing clubs, dry cleaning plants, and hat blockers.
21	G.S. 105-77	Tobacco warehouses.
22	G.S. 105-80	Firearms dealers and dealers in other weapons.
23	G.S. 105-85	Laundries.
24	G.S. 105-86	Outdoor advertising.
25	G.S. 105-89	Automobiles, wholesale supply dealers, and service
26		stations.
27	G.S. 105-89.1	Motorcycle dealers.
28	G.S. 105-90	Emigrant and employment agents.
29	G.S. 105-91	Plumbers, heating contractors, and electricians.
30	G.S. 105-97	Manufacturers of ice cream.
31	G.S. 105-98	Branch or chain stores.
32	G.S. 105-99	Wholesale distributors of motor fuels.
33	G.S. 105-102.1	Certain cooperative associations.
34	G.S. 105-102.5	General business license.

35

36 (b) Barbershop and Salon Restriction. – A privilege license tax levied by a city
37 on a barbershop or a beauty salon may not exceed two dollars and fifty cents (\$2.50) for
38 each barber, manicurist, cosmetologist, beautician, or other operator employed in the
39 barbershop or beauty salon.

40 (c) ~~Piped Gas Restriction. Prohibition.~~ – A city may not ~~levy a privilege license~~
41 ~~tax on a person who is engaged in the business of supplying piped natural gas and is~~
42 ~~subject to tax under Article 5E of Chapter 105 of the General Statutes.~~ impose a license,
43 franchise, or privilege tax on a person engaged in any of the businesses listed in this

1 subsection. These businesses are subject to a State tax for which the city receives a
2 share of the tax revenue.

3 (1) Supplying piped natural gas taxed under Article 5E of Chapter 105 of
4 the General Statutes.

5 (2) Providing telecommunications service taxed under
6 G.S. 105-164.4(a)(4c).

7 (3) Providing video programming taxed under G.S. 105-164.4(a)(6).

8 (d) ~~Telecommunications Restriction. — A city may not impose a license,~~
9 ~~franchise, or privilege tax on a company taxed under G.S. 105-164.4(a)(4c)."~~

10 **SECTION 13.** G.S. 160A-214 is repealed.

11 **SECTION 14.** G.S. 160A-296(a) reads as rewritten:

12 "(a) A city shall have general authority and control over all public streets,
13 sidewalks, alleys, bridges, and other ways of public passage within its corporate limits
14 except to the extent that authority and control over certain streets and bridges is vested
15 in the Board of Transportation. General authority and control includes but is not limited
16 to all of the following:

17 (1) The duty to keep the public streets, sidewalks, alleys, and bridges in
18 proper ~~repair;~~repair.

19 (2) The duty to keep the public streets, sidewalks, alleys, and bridges open
20 for travel and free from unnecessary ~~obstructions;~~obstructions.

21 (3) The power to open new streets and alleys, and to widen, extend, pave,
22 clean, and otherwise improve existing streets, sidewalks, alleys, and
23 bridges, and to acquire the necessary land therefor by dedication and
24 acceptance, purchase, or eminent ~~domain;~~domain.

25 (4) The power to close any street or alley either permanently or
26 ~~temporarily;~~temporarily.

27 (5) The power to regulate the use of the public streets, sidewalks, alleys,
28 and ~~bridges;~~bridges.

29 (6) The power to regulate, license, and prohibit digging in the streets,
30 sidewalks, or alleys, or placing therein or thereon any pipes, poles,
31 wires, fixtures, or appliances of any kind either on, above, or below the
32 ~~surface;~~surface. In exercising this power, a city may not impose a fee
33 or charge for use of the public right-of-way unless the fee or charge
34 applies uniformly to all nonmunicipal users of the public right-of-way.

35 (7) The power to provide for lighting the streets, alleys, and bridges of the
36 ~~city;~~and city.

37 (8) The power to grant easements in street rights-of-way as permitted by
38 G.S. 160A-273."

39 **SECTION 15.** G.S. 160A-319(a) reads as rewritten:

40 "(a) A city shall have authority to grant upon reasonable terms franchises for ~~the~~
41 ~~operation within the city of a telephone system and any of the enterprises listed in~~
42 ~~G.S. 160A-311 and for the operation of telephone systems. G.S. 160A-311, except a~~
43 cable television system. A franchise granted by a city authorizes the operation of the
44 franchised activity within the city. No franchise shall be granted for a period of more

1 than 60 years, except that a franchise for solid waste collection or disposal systems and
2 facilities shall not be granted for a period of more than 30 years and cable television
3 franchises shall not be granted for a period of more than 20 years. Except as otherwise
4 provided by law, when a city operates an enterprise, or upon granting a franchise, a city
5 may by ordinance make it unlawful to operate an enterprise without a franchise."

6 **SECTION 16.** To make the distribution required under G.S. 105-164.44I(c),
7 as enacted by this act, for the 2006-2007 fiscal year, a county or city must certify to the
8 Secretary of Revenue by January 15, 2007, the number of qualifying PEG channels it
9 operates.

10 **SECTION 17.** A primary purpose of this act is to promote consumer choice
11 in video service providers. A premise of this goal is that increased competition will lead
12 to improved service. Under competition, a customer who is dissatisfied with service by
13 one cable service provider will have the option of choosing a different service provider.

14 G.S. 66-356, as enacted by this act, designates the Consumer Protection
15 Division of the Attorney General's Office as the agency to receive and respond to
16 unresolved customer complaints about cable service provided by the holder of a
17 State-issued franchise. The transition from local franchise agreements to State-issued
18 franchises will occur gradually.

19 Due to the expected improvement in customer service and the gradual change
20 to State-issued franchises, the impact of the requirement in new G.S. 66-356 on the
21 staffing needs of the Consumer Protection Division is not clear. The Office of the
22 Attorney General is therefore requested to monitor the number and type of cable service
23 complaints it receives from customers in areas served under a local franchise agreement
24 and from areas served under a State-issued franchise to determine whether the
25 Consumer Protection Division needs additional staff to fulfill the duty imposed by new
26 G.S. 66-356 and to make a report concerning staffing to the Fiscal Research Division of
27 the North Carolina General Assembly by April 1, 2007.

28 **SECTION 18.** The Secretary of State has no authority to determine whether
29 a person who is providing video programming is providing cable service over a cable
30 system. An award of a State-issued franchise under Article 42 of Chapter 66 of the
31 General Statutes, as enacted by this act, does not affect a determination of whether
32 video programming provided by the holder of the franchise is considered cable service
33 provided over a cable system under federal law or under a state law that applies
34 substantially the same definitions of "cable service" and "cable system" as federal law.
35 A person who provides video programming may obtain a State-issued franchise under
36 Article 42 of Chapter 66 of the General Statutes, as enacted by this act, regardless of
37 whether the video programming the person provides is considered cable service
38 provided under a cable system under that Article or under federal law.

39 **SECTION 19.** If any provision of this act or its application is held invalid,
40 the invalidity does not affect other provisions or applications of this act that can be
41 given effect without the invalid provisions or application, and to this end the provisions
42 of this act are severable.

43 **SECTION 20.** The Revenue Laws Study Committee must review the effect
44 Article 42 of Chapter 66, as enacted by this act, has on the following to determine if any

1 changes to the law are needed and must report its findings to the 2009 Session of the
2 North Carolina General Assembly:

- 3 (1) Competition in video programming services.
- 4 (2) The number of cable service subscribers, the price of cable service by
5 service tier, and the technology used to deliver the service.
- 6 (3) The deployment of broadband in the State.

7 **SECTION 21.** This act becomes effective January 1, 2007. Sections 7 and 8
8 of this act apply to the distribution made within 75 days after March 31, 2007, for the
9 quarter starting January 1, 2007.