

As Reported by the House Public Utilities Committee

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Sub. S. B. No. 117

Senator Jacobson

Cosponsors: Senators Miller, R., Spada, Buehrer, Mumper, Niehaus, Stivers,

Mason, Fedor, Harris, Coughlin, Wilson, Sawyer

Representatives Hottinger, Williams, S., Bacon, Hagan, J.

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A B I L L

To amend section 153.64, to enact sections 1332.21, 1
1332.22, 1332.23, 1332.24, 1332.25, 1332.26, 2
1332.27, 1332.28, 1332.29, 1332.30, 1332.31, 3
1332.32, 1332.33, and 1332.34, and to repeal 4
sections 505.90, 505.91, and 505.92 of the Revised 5
Code to provide for the issuance of video service 6
authorizations by the Director of Commerce. 7

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 153.64 be amended and sections 8
1332.21, 1332.22, 1332.23, 1332.24, 1332.25, 1332.26, 1332.27, 9
1332.28, 1332.29, 1332.30, 1332.31, 1332.32, 1332.33, and 1332.34 10
of the Revised Code be enacted to read as follows: 11

Sec. 153.64. (A) As used in this section: 12

(1) "Public improvement" means any construction, 13
reconstruction, improvement, enlargement, alteration, or repair of 14
a building, highway, drainage system, water system, road, street, 15
alley, sewer, ditch, sewage disposal plant, water works, and all 16
other structures or works of any nature by a public authority. 17

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

(3) "Underground utility facilities" includes any item buried or placed below ground or submerged under water for use in connection with the storage or conveyance of water or sewage; or electronic, telephonic, or telegraphic communications; electricity; electric energy; petroleum products; manufactured, mixed, or natural gas; synthetic or liquified natural gas; propane gas; or other substances. "Underground utility facilities" includes, but is not limited to, all operational underground pipes, sewers, tubing, conduits, cables, valves, lines, wires, manholes, and attachments, whether owned by any public or private or profit or nonprofit person, firm, partnership, company, corporation, joint stock association, joint venture, or voluntary association, wherever organized or incorporated, except for a private septic system in a single- or double-family dwelling utilized only for that dwelling and not connected to any other system.

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

pursuant to division (F) of this section. 50

(5) "Owner of underground utility facility" does not include 51
telephone companies classified as medium or small under rule 52
4901-7-01 of the Ohio Administrative Code, owners of pipelines 53
that conduct liquid petroleum products, or cable television 54
companies ~~as defined in division (B) of section 505.90 of the~~ 55
~~Revised Code~~ to the extent that it requires membership in an 56
underground utility protection service. 57

(6) "Construction area" means the area delineated on the 58
plans and specifications for the public improvement within which 59
the work provided for in the contract will be performed. 60

(B) In any public improvement which may involve underground 61
utility facilities, the public authority, prior to preparing plans 62
and specifications, shall contact the registered underground 63
utility protection services and the owners of underground utility 64
facilities that are not members of a registered underground 65
utility protection service for the existence and location of all 66
underground utility facilities within the construction area. The 67
public authority shall include, in the plans and specifications 68
for such improvement, the identity and location of the existing 69
underground utility facilities located in the construction area as 70
provided to the public authority by the owner of the underground 71
utility facility and the name, address, and telephone number of 72
each owner of any underground utility facilities in the 73
construction area that does not subscribe to a registered 74
underground utility protection service. Any anticipated temporary 75
or permanent relocation of underground utility facilities deemed 76
necessary by the public authority shall be negotiated or arranged 77
by the public authority with the owners of the underground utility 78
facilities prior to the start of construction. If a temporary or 79
permanent relocation of utility facilities is necessary, the owner 80
of the underground utility facility shall be given a reasonable 81

time to move such utility facilities unless the contractor to whom 82
the contract for a public improvement is awarded or its 83
subcontractor agrees with the owner of the underground utility 84
facility to coordinate relocation with construction operations. 85
The public authority, within ten calendar days after award of a 86
contract for a public improvement, shall notify in writing all 87
owners of underground utility facilities known to be located in 88
the construction area of the public improvement of the name and 89
address of the contractor to whom the contract for the public 90
improvement was awarded. Where notice is given in writing by 91
certified mail, the return receipt, signed by any person to whom 92
the notice is delivered, shall be conclusive proof of notice. 93

(C) The contractor to whom a contract for a public 94
improvement is awarded or its subcontractor, at least two working 95
days, excluding Saturdays, Sundays, and legal holidays, prior to 96
commencing construction operations in the construction area which 97
may involve underground utility facilities, shall cause notice to 98
be given to the registered underground utility protection services 99
and the owners of underground utility facilities shown on the 100
plans and specifications who are not members of a registered 101
underground utility protection service, in writing, by telephone, 102
or in person. Where notice is given in writing by certified mail, 103
the return receipt, signed by any person to whom the notice is 104
delivered, shall be conclusive proof of notice. The owner of the 105
underground utility facility, within forty-eight hours, excluding 106
Saturdays, Sundays, and legal holidays, after notice is received, 107
shall stake, mark, or otherwise designate the location of the 108
underground utility facilities in the construction area in such a 109
manner as to indicate their course together with the approximate 110
depth at which they were installed. The marking or locating shall 111
be coordinated to stay approximately two days ahead of the planned 112
construction. 113

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

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

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

Any public authority who complies with the requirements of division (B) of this section and any contractor or its subcontractor who complies with the requirements of division (C) of this section shall not be responsible to the owner of the underground utility facility if underground utility lines are encountered not as marked in accordance with the provisions of

division (C) of this section by the owner of the underground 146
utility facility, unless the contractor or its subcontractor has 147
actual notice of the underground utility facility. Except as noted 148
in this division, this section does not affect rights between the 149
contractor or its subcontractor and the owner of the underground 150
utility facility for failure to mark or erroneously marking 151
utility lines. The public authority shall not make as a 152
requirement of any contract for public improvement any change in 153
responsibilities between the public authority and the owners of 154
the underground utility facilities in connection with damage, 155
injury, or loss to any property in connection with underground 156
utility facilities. 157

The contractor or its subcontractor shall alert immediately 158
the occupants of nearby premises as to any emergency that ~~he~~ the 159
contractor or subcontractor may create or discover at or near such 160
premises. The contractor or its subcontractor shall report 161
immediately to the owner or operator of the underground facility 162
any break or leak on its lines or any dent, gouge, groove, or 163
other damage to such lines or to their coating or cathodic 164
protection, made or discovered in the course of their excavation. 165

(E) This section does not affect rights between the public 166
authority and the owners of the underground utility facilities for 167
responsibility for costs involving removal, relocation, or 168
protection of existing underground utility facilities, or for 169
costs for delays occasioned thereby. 170

(F) An underground utility protection service shall register 171
with the secretary of state and the public utilities commission of 172
Ohio, identifying its name, address, telephone number, membership, 173
and other pertinent information. The secretary of state and 174
commission shall establish procedures for accepting such 175
registrations and providing information about registrants to 176
public authorities on request. 177

Sec. 1332.21. As used in sections 1332.21 to 1332.34 of the 178
Revised Code: 179

(A) "Access to video service" means the capability of a video 180
service provider to provide video service at a household address 181
irrespective of whether a subscriber has ordered the service or 182
whether the service is actually provided at that address. 183

(B) "Basic local exchange service" has the same meaning as in 184
section 4927.01 of the Revised Code. 185

(C) "Cable operator," "cable service," "cable system," 186
"franchise," and "franchising authority" have the same meanings as 187
in the "Cable Communications Policy Act of 1984," Pub. L. No. 188
98-549, 98 Stat. 2780, 2781, 47 U.S.C. 522, as amended by the 189
"Telecommunications Act of 1996," Pub. L. No. 104-104, 110 Stat. 190
56. 191

(D) "Competitive video service agreement" means any 192
agreement, memorandum of understanding, or other document that 193
provides or has the effect of providing, whether or not as a 194
franchise, authorization by a municipal corporation or township 195
for the provision of video service within its boundaries by a 196
person using telecommunications facilities to provide that 197
service. 198

(E) "Household" means, consistent with the regulations of the 199
bureau of the census of the United States department of commerce, 200
a house, an apartment, a mobile home, a group of rooms, or a 201
single room that is intended for occupancy as separate living 202
quarters. "Separate living quarters" are those in which the 203
occupants live and eat separately from any other persons in the 204
building and that have direct access from the outside of the 205
building or through a common hall. 206

(F) "Low-income households" means those residential 207

households that are located within the video service provider's 208
video service area and have an average annual household income of 209
less than thirty-five thousand dollars based on United States 210
census bureau estimates on January 1, 2007. 211

(G) "PEG channel" means a channel, for public, educational, 212
and governmental programming, made available by a video service 213
provider or cable operator for noncommercial use. 214

(H) "Telecommunications service" has the same meaning as in 215
the "Telecommunications Act of 1996," Pub. L. No. 104-104, Title 216
I, Section 3, 110 Stat. 60, 47 U.S.C. 153. 217

(I) "Video programming" means programming provided by, or 218
generally considered comparable to programming provided by, a 219
television broadcast station, as set forth in the "Cable 220
Communications Policy Act of 1984," Pub. L. No. 98-549, 98 Stat. 221
2781, 47 U.S.C. 522. 222

(J) "Video service" means the provision of video programming 223
over wires or cables located at least in part in public 224
rights-of-way, regardless of the technology used to deliver that 225
programming, including internet protocol technology or any other 226
technology. The term includes cable service, but excludes video 227
programming provided to persons in their capacity as subscribers 228
to commercial mobile service as defined in the "Telecommunications 229
Act of 1996," Pub. L. No. 104-104, Title VII, Sections 704(a) and 230
705, 110 Stat. 61, 151, 153, 47 U.S.C. 332; video programming 231
provided solely as part of and via a service that enables users to 232
access content, information, electronic mail, or other services 233
offered over the public internet; and signals distributed by a 234
cable television system to paying subscribers in the 235
unincorporated area of a township prior to October 1, 1979, as 236
authorized under section 505.91 of the Revised Code as that 237
section existed prior to its repeal by S.B. 117 of the 127th 238
general assembly, unless a franchise was subsequently issued to 239

the same company as authorized under that section. 240

(K) "Video service area" means the service area specified 241
pursuant to divisions (A) and (B) of section 1332.25 of the 242
Revised Code. 243

(L) "Video service network" means wires or cables and 244
associated facilities or components used to deliver video service 245
and includes a cable system. 246

(M) "Video service provider" means a person granted a video 247
service authorization under sections 1332.21 to 1332.34 of the 248
Revised Code. 249

Sec. 1332.22. The general assembly finds and declares all of 250
the following for the purposes of sections 1332.21 to 1332.34 of 251
the Revised Code: 252

(A) Video service brings significant daily benefits to this 253
state by providing news, education, and entertainment. 254

(B) This state's economy will be enhanced by investment in 255
new communications and video programming infrastructure, including 256
fiber optic and internet protocol technologies. 257

(C) Enhancing the existing broadband infrastructure and 258
increasing consumer access to robust and reliable broadband 259
products and services are also important, statewide concerns. 260

(D) To date, there has been only minimal competitive entry by 261
telephone companies into the facilities-based video programming 262
market in this state, in part, because local franchise 263
requirements may present barriers to entry. 264

(E) Increased competition in the provision of video service 265
will provide new and more video programming choices for consumers 266
in this state, and new providers have stated their desire to 267
supply that service. 268

<u>(F) The time-to-market interval is critical for new entrants seeking to compete with incumbents.</u>	269
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<u>(G) Local franchise and other requirements may present inordinate delays for new entrants.</u>	271
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<u>(H) This state can and should provide a uniform regulatory framework by which persons can rapidly and expeditiously provide video service to residents of this state regardless of their jurisdictional locations, which framework will promote rapid competitive entry into the video service market and encourage additional, significant infrastructure investment.</u>	273
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<u>(I) Maintaining an existing franchise in cases where new entrants obtain video service authorizations is not appropriate unless the incumbent chooses to maintain that franchise.</u>	279
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<u>(J) The continued development of Ohio's video service market and promotion of infrastructure investment are matters of statewide concern and are properly subject to exercises of this state's police power.</u>	282
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<u>(K) By analogy to <i>Am. Financial Servs. Assn. et al. v. Cleveland</i>, 112 Ohio St. 3d 170, 2006-Ohio-6043, citing <i>Canton v. State</i>, 95 Ohio St.3d 149, 2002-Ohio-2005, syllabus, sections 1332.21 to 1332.34 of the Revised Code are intended as a comprehensive legislative enactment operating uniformly throughout this state, setting forth police regulations, and prescribing a rule of conduct upon citizens generally.</u>	286
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<u>Sec. 1332.23.</u> (A) <u>Except as otherwise provided in division</u>	293
<u>(B)(1) or (2) of this section, no person shall provide video service in this state on or after the effective date of this section except pursuant to a video service authorization issued under section 1332.24 of the Revised Code. Nothing in sections 1332.21 to 1332.34 of the Revised Code equates authority to</u>	294
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construct and operate telecommunications facilities in a public 299
right-of-way to authority to provide access to video service. 300

(B)(1)(a) Solely at the option of a person that offers 301
service under a franchise or competitive video service agreement 302
in effect on the effective date of this section, the person may 303
continue on and after that date to provide service within the 304
franchise area or the respective municipal corporation or 305
unincorporated area of a township pursuant to the terms and 306
conditions of the franchise or agreement. However, no such 307
franchise or agreement shall be renewed or extended beyond the 308
existing term of the franchise or agreement or its earlier 309
termination pursuant to the terms and conditions of the franchise 310
or agreement. 311

(b) Any person that is providing video service in this state 312
on the effective date of this section pursuant to the terms and 313
conditions of an expired franchise or competitive video service 314
agreement, or is otherwise providing video service on that date 315
other than as described in division (B)(1)(a) of this section, has 316
ninety days beginning on the effective date of this section to 317
file an application for a video service authorization under 318
section 1332.25 of the Revised Code. 319

(2) A person that offers service under a franchise or 320
competitive video service agreement pursuant to division (B)(1)(a) 321
of this section may apply, under any of the following 322
circumstances under section 1332.25 of the Revised Code, for a 323
video service authorization to provide video service within an 324
area served by its video service network on the effective date of 325
this section under that franchise or agreement: 326

(a) Before the expiration or termination of the person's 327
franchise or competitive video service agreement for that area in 328
accordance with its terms and conditions; 329

(b) After any other person provides or sells video service in that area; 330
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(c) After receiving notice pursuant to division (A) of section 1332.27 of the Revised Code; 332
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(d) After a determination by the federal communications commission under 47 C.F.R. 76.907 that the person is subject in that area to effective competition as defined in 47 C.F.R. 76.905(b). 334
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Upon the effective date of a video service authorization obtained by the person under division (B)(2) of this section, the franchise or competitive video service agreement terminates, and no provision of that franchise or agreement is enforceable. 338
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(C) Video service constitutes cable service over a cable system for the purposes of sections 1332.01 to 1332.10 of the Revised Code. For purposes of division (B)(4) of section 4939.05 and divisions (A)(3) and (D)(2) of section 4939.08 of the Revised Code, a municipal corporation that receives a video service provider fee described in section 1332.32 of the Revised Code constitutes a municipal corporation that charges a franchise fee, and a video service authorization described in section 1332.24 of the Revised Code constitutes a franchise between a cable operator and a municipal corporation. 342
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Sec. 1332.24. (A)(1) In accordance with section 1332.25 of the Revised Code, the director of commerce may issue to any person, or renew, a video service authorization, which authorization confers on the person the authority, subject to sections 1332.21 to 1332.34 of the Revised Code, to provide video service in its video service area; construct and operate a video service network in, along, across, or on public rights-of-way for the provision of video service; and, when necessary to provide that service, exercise the power of a telegraph company under 352
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section 4931.04 of the Revised Code. The term of a video service 361
authorization or authorization renewal shall be ten years. 362

(2) For the purposes of the "Cable Communications Policy Act 363
of 1984," Pub. L. No. 98-549, 98 Stat. 2779, 47 U.S.C. 521 et 364
seq., a video service authorization shall constitute a franchise 365
under that law, and the director shall be the sole franchising 366
authority under that law for video service authorizations in this 367
state. 368

(B)(1) The director may investigate alleged violations of or 369
failures to comply with division (A) of section 1332.23, division 370
(C) of section 1332.25, division (C) or (D) of section 1332.26, 371
division (A), (B), or (C) of section 1332.27, division (A) of 372
section 1332.28, division (A) or (B) of section 1332.29, or 373
section 1332.30 or 1332.31 of the Revised Code, or complaints 374
concerning any such violation or failure. Except as provided in 375
this section, the director has no authority to regulate video 376
service in this state, including, but not limited to, the rates, 377
terms, or conditions of that service. 378

(2) In conducting an investigation under division (B)(1) of 379
this section, the director, by subpoena, may compel witnesses to 380
testify in relation to any matter over which the director has 381
jurisdiction and may require the production of any book, record, 382
or other document pertaining to that matter. If a person fails to 383
file any statement or report, obey any subpoena, give testimony, 384
produce any book, record, or other document as required by a 385
subpoena, or permit photocopying of any book, record, or other 386
document subpoenaed, the court of common pleas of any county in 387
this state, upon application made to it by the director, shall 388
compel obedience by attachment proceedings for contempt, as in the 389
case of disobedience of the requirements of a subpoena issued from 390
the court or a refusal to testify. 391

(C)(1) If the director finds that a person has violated or 392

failed to comply with division (A) of section 1332.23, division 393
(C) of section 1332.25, division (C) or (D) of section 1332.26, 394
division (A), (B), or (C) of section 1332.27, division (A) of 395
section 1332.28, division (A) or (B) of section 1332.29, or 396
section 1332.30 or 1332.31 of the Revised Code, and the person has 397
failed to cure the violation or failure after reasonable, written 398
notice and reasonable time to cure, the director may do any of the 399
following: 400

(a) Apply to the court of common pleas of any county in this 401
state for an order enjoining the activity or requiring compliance. 402
Such an action shall be commenced not later than three years after 403
the date the alleged violation or failure occurred or was 404
reasonably discovered. Upon a showing by the director that the 405
person has engaged in a violation or failure to comply, the court 406
shall grant an injunction, restraining order, or other appropriate 407
relief. 408

(b) Enter into a written assurance of voluntary compliance 409
with the person; 410

(c) Pursuant to an adjudication under Chapter 119. of the 411
Revised Code, assess a civil penalty in an amount determined by 412
the director, including for any failure to comply with an 413
assurance of voluntary compliance under division (C)(1)(b) of this 414
section. The amount shall be not more than one thousand dollars 415
for each day of violation or noncompliance, not to exceed a total 416
of ten thousand dollars, counting all subscriber impacts as a 417
single violation or act of noncompliance. In determining whether a 418
civil penalty is appropriate under division (C)(1)(c) of this 419
section, the director shall consider all of the following factors: 420

(i) The seriousness of the noncompliance; 421

(ii) The good faith efforts of the person to comply; 422

(iii) The person's history of noncompliance; 423

(iv) The financial resources of the person; 424

(v) Any other matter that justice requires. 425

Civil penalties collected pursuant to division (C)(1)(c) of 426
this section shall be deposited to the credit of the video service 427
enforcement fund in the state treasury, which is hereby created, 428
to be used by the department of commerce in carrying out its 429
duties under this section. 430

(2) Pursuant to an adjudication under Chapter 119. of the 431
Revised Code, the director may revoke, in whole or in part, the 432
video service authorization of any person that has repeatedly and 433
knowingly violated or failed to comply with division (A) of 434
section 1332.23, division (C) of section 1332.25, division (C) or 435
(D) of section 1332.26, division (A), (B), or (C) of section 436
1332.27, division (A) of section 1332.28, division (A) or (B) of 437
section 1332.29, or section 1332.30 or 1332.31 of the Revised Code 438
and that has failed to cure the violations or noncompliances after 439
reasonable written notice and reasonable time to cure. Such person 440
acts knowingly, regardless of the person's purpose, when the 441
person is aware that the person's conduct will probably cause a 442
certain result or will probably be of a certain nature. A person 443
has knowledge of circumstances when the person is aware that such 444
circumstances probably exist. 445

(3) The court shall conduct a de novo review in any appeal 446
from an adjudication under division (C)(1)(c) or (C)(2) of this 447
section. 448

(D) The public utilities commission has no authority over a 449
video service provider in its offering of video service or a cable 450
operator in its offering of cable or video service, or over any 451
person in its offering of video service pursuant to a competitive 452
video service agreement. 453

Sec. 1332.25. (A) An application made to the director of 454
commerce for a video service authorization under section 1332.24 455
of the Revised Code shall require and contain only the following: 456

(1) Specification of the location of the applicant's 457
principal place of business and the names of the applicant's 458
principal executive officers; 459

(2) Specification of the geographic and political boundaries 460
of the applicant's proposed video service area; 461

(3) A general description of the type or types of 462
technologies the applicant will use to deliver the video 463
programming, which may include wireline, wireless, or any other 464
alternative technology, subject, as applicable, to section 1332.29 465
of the Revised Code; 466

(4) An attestation that the applicant has filed or will 467
timely file with the federal communications commission all forms 468
required by that agency in advance of offering video service in 469
this state; 470

(5) An attestation that the applicant will comply with 471
applicable federal, state, and local laws; 472

(6) An attestation that the applicant is legally, 473
financially, and technically qualified to provide video service; 474

(7) A description of the applicant's customer complaint 475
handling process, including policies on addressing customer 476
service issues, billing adjustments, and communication with 477
government officials regarding customer complaints, and a local or 478
toll-free telephone number at which a customer may contact the 479
applicant. 480

(B) For the purpose of division (A)(2) of this section: 481

(1) The video service areas of video service providers may 482
overlap. 483

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

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

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

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

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

authorization, authorization renewal, or amended authorization 516
within fifteen days after the director's determination that the 517
filed application is complete. 518

If the director does not notify the applicant regarding the 519
completeness of the application within the time period specified 520
in this division or does not issue the authorization requested by 521
a completed application within the applicable time period, the 522
application shall be deemed complete, and the authorization or 523
amended authorization deemed issued on the forty-fifth day after 524
the application's filing date. 525

(E) An applicant shall pay a two thousand dollar 526
nonrefundable fee for each application filed under division (A) of 527
this section and a one hundred dollar nonrefundable fee for each 528
application to amend filed under division (C) of this section. 529
Fees collected under this division shall be deposited to the 530
credit of the video service authorization fund in the state 531
treasury, which is hereby created, to be used by the department of 532
commerce in carrying out its duties under this section. 533

(F) No video service provider shall identify or make 534
reference to an application fee under division (E) of this section 535
on any subscriber bill or in conjunction with charging any fee to 536
the subscriber. 537

(G) An applicant may identify any information in its 538
application as trade secret information, and if, upon its written 539
request to the director, the director reasonably affirms all or 540
part of that information as trade secret information, the 541
information so affirmed does not constitute a public record for 542
the purpose of section 149.43 of the Revised Code. 543

Sec. 1332.26. (A) No political subdivision shall require a 544
video service provider to obtain from it any authority to provide 545
video service within its boundaries. 546

(B) Except as authorized under division (C) of this section 547
and under sections 1332.30 and 1332.32 of the Revised Code, no 548
political subdivision shall request anything of value from a video 549
service provider for providing video service; impose any fee, 550
license, or gross receipt tax on the provision of video service by 551
such a provider; or impose any franchise or other requirement on 552
the provision of video service by a video service provider, 553
including, but not limited to, any provision regulating rates 554
charged by a video service provider or establishing any build-out 555
requirement or requirement to deploy any facility or equipment. 556

(C) When requested to do so, a video service provider shall 557
assist a municipal corporation or township in addressing video 558
service subscriber complaints, in a manner consistent with the 559
provider's complaint handling process set forth in its application 560
pursuant to division (A)(7) of section 1332.24 of the Revised 561
Code. Nothing in sections 1332.21 to 1332.34 of the Revised Code 562
affects any authority granted under sections 1345.01 to 1345.13 of 563
the Revised Code. 564

(D) A video service provider shall meet all of the following 565
customer service standards: 566

(1) The provider shall restore video service within 567
seventy-two hours after a subscriber reports a service 568
interruption or other problem if the cause was not a natural 569
disaster. 570

(2) Upon a report by a subscriber of a service interruption 571
and if the interruption is caused by the video service provider 572
and lasts for more than four hours in a given day, the provider 573
shall give the subscriber a credit in the amount of the cost of 574
each such day's video service as would be billed to the 575
subscriber. 576

(3) Upon a report by a subscriber of a service interruption 577

and if the interruption is not caused by the video service 578
provider and lasts for more than twenty-four consecutive hours, 579
the provider shall give the subscriber, for each hour of service 580
interruption, a credit in the amount of the cost of per hour video 581
service as would be billed to the subscriber. 582

(4) The provider shall give a subscriber at least thirty 583
days' advance, written notice before removing a channel from the 584
provider's video service, but no such notice is required if the 585
provider must remove the channel because of circumstances beyond 586
its control. 587

(5) The provider shall give a subscriber at least ten days' 588
advance, written notice of a disconnection of all or part of the 589
subscriber's video service, except if the disconnection has been 590
requested by the subscriber, is necessary to prevent theft of 591
video service, or is necessary to reduce or prevent signal leakage 592
as described in 47 C.F.R. 76.611. 593

(6) The provider shall not disconnect all or part of a 594
subscriber's video service for failure of the subscriber to pay 595
its video service bill, until the bill is at least forty-five days 596
past due. 597

(7) The provider shall give a subscriber at least thirty 598
days' advance, written notice before instituting an increase in 599
video service rates. 600

Sec. 1332.27. (A) Before providing or selling video service 601
to one or more subscribers within its video service area or any 602
additional video service area under division (C) of section 603
1332.25 of the Revised Code, a video service provider shall 604
provide ten days' advance, written notice of that service or 605
additional service to the respective municipal corporation or 606
township and to every person providing video service in all or 607
part of that video service area. 608

(B) A video service provider may transfer its video service authorization to a successor. Within ten days after completing the transfer, the provider shall provide written notice to the respective municipal corporation or township. The transfer is not valid until the date that the successor files a complete affidavit with the director of commerce containing the information specified in division (A) of section 1332.25 of the Revised Code. The director has no authority to act upon the notice or the completed affidavit. 609
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(C)(1) A video service provider may terminate video service to its video service area, but only after providing ninety days' advance, written notice to the director, affected subscribers, and the respective municipal corporations or townships comprising the video service area. The director has no authority to act upon the notice. 618
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(2) Notwithstanding division (C)(1) of this section, a video service provider that provided video service in this state under a franchise on the effective date of this section shall not abandon the video service it provided within the franchise area to subscribers served on that effective date, at least until the franchise would have expired if not terminated under division (B) of section 1332.23 of the Revised Code. 624
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Sec. 1332.28. (A) Consistent with the "Telecommunications Act of 1996," Pub. L. No. 104-104, Title III, Sections 303(a), 110 Stat. 61, 124, 47 U.S.C. 541(a)(3) and to prohibit discriminatory practices against a group of potential residential subscribers, no video service provider shall deny access to video service to any group of potential residential subscribers in its video service area because of the race or income of the residents in the local area in which the group resides. 631
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(B) It is an affirmative defense to a violation of division 639

(A) of this section if the video service provider can demonstrate 640
either of the following: 641

(1) Three years after the date it began providing video 642
service in its video service area, at least twenty-five per cent 643
of households with access to the provider's video service are 644
low-income households. 645

(2) Five years after the date it began providing video 646
service in its video service area and thereafter, at least thirty 647
per cent of the households with access to the provider's video 648
service are low-income households. 649

Sec. 1332.29. (A)(1) A video service provider that both uses 650
telecommunications facilities to provide video service and has 651
more than one million telephone access lines in this state shall 652
provide access to video service to at least: 653

(a) Twenty-five per cent of the households in its video 654
service area within two years after the date it began providing 655
video service in that area; 656

(b) Fifty per cent of the households in its video service 657
area within five years after the date it began providing video 658
service in that area, except that a video service provider need 659
not meet that fifty per cent requirement until two years after at 660
least thirty per cent of the households with access to the 661
provider's video service under its video service authorization 662
subscribe to the service for six consecutive months. 663

(2) A video service provider may comply with division 664
(A)(1)(a) or (b) of this section through the use of alternative 665
technology, except satellite technology, that offers service, 666
functionality, and content demonstrably similar to the service, 667
functionality, and content the provider otherwise provides through 668
its video service network. 669

(B) A video service provider shall file an annual report with the director of commerce describing its compliance with division (A) of this section or, as applicable, its progress toward that compliance. 670
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(C) A video service provider may apply to the director for a waiver of or for an extension of time to comply with division (A)(1) of this section. The director may grant the waiver or extension only if the director determines that the video service provider has made substantial and continual effort to comply and determines that one or more of the following caused the provider's inability to comply: 674
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(1) The provider is unable to obtain access to public and private rights-of-way under reasonable terms and conditions. 681
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(2) Developments or buildings are not subject to competition because of existing, exclusive service arrangements. 683
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(3) Developments or buildings are inaccessible using reasonable technical solutions under commercially reasonable terms and conditions. 685
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(4) A natural disaster prevents compliance. 688

(5) There are other factors beyond the provider's control. 689

If an extension of time is granted, the director shall establish a new compliance deadline. If a waiver is granted, the director shall specify the requirement or requirements waived. 690
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Sec. 1332.30. (A)(1)(a) If a municipal corporation or township has three or more PEG channels programmed on January 1, 2007, the person providing those channels pursuant to a franchise, competitive video service agreement, ordinance, or resolution or otherwise shall continue to provide those PEG channels, three of which shall be on the person's basic service tier, with the additional PEG channels on the person's basic service tier or on 693
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any service tier viewed by more than fifty per cent of the 700
subscribers in the video service area. Any such additional channel 701
may be reclaimed if it is not substantially utilized. For the 702
purpose of division (A)(1)(a) and (B)(2) of this section, a PEG 703
channel is "not substantially utilized" when fewer than forty 704
hours of noncharacter-generated content are programmed on that 705
channel each week and less than sixty per cent of the programming 706
is nonrepeat and locally produced. 707

(b) If the municipal corporation or township has one or two 708
PEG channels programmed on January 1, 2007, the person providing 709
those channels pursuant to a franchise, competitive video service 710
agreement, ordinance, or resolution or otherwise shall continue to 711
provide the channel or channels, with one PEG channel on the 712
person's basic service tier and, as applicable, the second PEG 713
channel on the person's basic service tier or on any service tier 714
viewed by more than fifty per cent of the subscribers in the video 715
service area. 716

(2) A municipal corporation or township by written notice may 717
require a person providing video service in the municipal 718
corporation or township on or after the effective date of this 719
section, other than a person described in division (A)(1)(a) or 720
(b) of this section, to provide the same number of PEG channels 721
under the same service tier conditions and subject to the same 722
channel reclamation as those required under division (A)(1)(a) or 723
(b) of this section of the incumbent person but, if there is more 724
than one such incumbent that provided PEG channels on January 1, 725
2007, the person shall provide the same number required of the 726
incumbent with the most recent obligation. The notice shall state 727
the appropriate number of PEG channels and the service tiers 728
required. Following receipt of that notice, the person shall 729
provide the PEG channels not later than one hundred twenty days 730
after the municipal corporation or township is able to deliver the 731

PEG channel content. 732

(3) Nothing in division (A) of this section precludes a 733
person and a municipal corporation or township from entering into 734
other arrangements for PEG channels, including agreements 735
increasing or decreasing the number of channels required under 736
division (A)(1)(a) or (b) of this section. 737

(B)(1) A municipal corporation or a township that has no PEG 738
channels programmed on January 1, 2007, and lies within a video 739
service provider's video service area may require the video 740
service provider by written notice to provide PEG channels 741
beginning after the provider initially provides access to video 742
service within the municipal corporation or unincorporated area of 743
the township. The video service provider shall provide the PEG 744
channels one hundred twenty days after the municipal corporation 745
or township is able to deliver the PEG channel content. The 746
provider may use any service tier viewed by more than fifty per 747
cent of the subscribers in the video service area to provide the 748
PEG channels. 749

(a) Except as provided in division (B)(2) of this section, 750
the number of required PEG channels shall not exceed three if the 751
respective municipal corporation or township has a population of 752
at least fifty thousand, or two if the population is less than 753
fifty thousand. If there is more than one video service provider 754
providing PEG channels in the municipal corporation or township, 755
the number of channels shall be the same for all the video service 756
providers. 757

(b) If a video service provider distributes video programming 758
to more than one municipal corporation or township through a 759
single headend or video hub office and the aggregate population of 760
the municipal corporations or townships is at least fifty 761
thousand, none of those municipal corporations or townships shall 762
require the provider to provide, in the aggregate, channel 763

capacity for more than three PEG channels. If the aggregate 764
population is less than fifty thousand, none of those municipal 765
corporations or townships shall require the provider to provide, 766
in the aggregate, channel capacity for more than two PEG channels. 767

(2) A video service provider may reclaim a PEG channel under 768
division (B) of this section that it determines is not 769
substantially utilized. At such time as the municipal corporation 770
or township that caused the establishment of the PEG channel can 771
later certify that the channel will be substantially utilized, the 772
video service provider, within one hundred twenty days after the 773
date the video service provider receives that certification, shall 774
restore the reclaimed channel as a PEG channel. However, the 775
provider need not carry that channel on any specified tier of 776
service. 777

(C) No municipal corporation or township shall require a 778
video service provider to provide any institutional network on its 779
video service network, except that a person that, pursuant to a 780
franchise, competitive video service agreement, ordinance, or 781
resolution or otherwise, provided any institutional network on 782
January 1, 2007, shall continue to provide the institutional 783
network until the obligation would have expired if not terminated 784
pursuant to division (B) of section 1332.23 of the Revised Code, 785
or, if earlier and as applicable, until January 1, 2012, or such 786
earlier date as may be specified in an ordinance or resolution in 787
effect on the effective date of this section. The provider shall 788
give the municipal corporation or township at least one hundred 789
twenty days' written advance notice of that termination. If the 790
obligation included terms regarding the infrastructure of the 791
institutional network upon the expiration of the obligation, the 792
video service provider shall honor those terms. Nothing in this 793
division precludes such a video service provider and a municipal 794
corporation or township from entering into other arrangements for 795

institutional networks. 796

(D) A video service provider shall accept PEG channel content 797
and programming under this section that, at the least, meets the 798
transmission standards of the national television standards 799
committee in effect on the effective date of this section. 800

(E)(1) The obligation of a person under a franchise, 801
competitive video service agreement, ordinance, or resolution in 802
effect on the effective date of this section to provide monetary 803
or other support to a municipal corporation or township for PEG 804
channel facilities shall continue until the obligation would have 805
expired if not terminated pursuant to division (B) of section 806
1332.23 of the Revised Code or, if earlier and as applicable, 807
January 1, 2012, or such earlier date as many be specified in an 808
ordinance or resolution in effect on the effective date of this 809
section. 810

(2)(a) Each other person providing access to video service 811
within the municipal corporation or the unincorporated area of a 812
township after the effective date of this section shall have the 813
same obligation to support PEG channel facilities during the same 814
time period as the incumbent under division (E)(1) of this 815
section, but, if there is more than one such incumbent, each other 816
person shall have the same obligation as the incumbent with the 817
most recent obligation. 818

(i) If the incumbent support is in the form of a percentage 819
of gross revenues or a per subscriber fee, the video service 820
provider shall provide that same level of support in that same 821
form. 822

(ii) If the incumbent support is in the form of a lump sum 823
payment without an offset to its video service provider fee, the 824
video service provider shall be responsible for a pro rata share 825
of that payment. 826

(iii) If the incumbent provides in-kind support, the video service provider shall pay the municipal corporation or township a pro rata share of the fair market value of that support. 827
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The video service provider may identify and collect the amount of any fees authorized by divisions (E)(2)(a)(i) or any payment authorized under division (E)(2)(a)(ii) or (iii) of this section and the cost of any content conversion, if applicable, as a separate line item on the bills of its subscribers having service addresses within the municipal corporation or unincorporated area of the township. 830
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(b) A video service provider's pro rata share under division (E)(2)(a)(ii) or (iii) of this section shall be based on its proportion of video service subscribers with service addresses in the municipal corporation or unincorporated area of the township. For the purpose of determining the pro rata shares, all persons under divisions (E)(1) and (2) of this section shall report quarterly to the municipal corporation or township the total number of subscribers served within the municipal corporation or the unincorporated area of the township. This information shall be treated as confidential by the municipal corporation or township and shall be used only to derive the pro rata shares. 837
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(c) The person shall remit its pro rata share to the municipal corporation or township quarterly, not sooner than forty-five nor later than sixty days after the end of the preceding calendar quarter. However, the person need not pay its pro rata share unless the municipal corporation or township provided notice to the person of the amount due. The municipal corporation or township shall use the payments only as authorized under federal law. 848
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(F)(1) A person shall provide to a municipal corporation or township transmission capacity for the PEG channels the person provides pursuant to division (A) or (B) of this section and may 856
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use the most economically and technologically efficient means of 859
providing that capacity. Except as otherwise provided in division 860
(F)(2) of this section, the person may charge the municipal 861
corporation or township for that transmission capacity. 862

(2)(a) Except as otherwise provided in division (F)(2)(b) of 863
this section, a person under division (A) of this section shall 864
provide the transmission capacity at no charge until the earlier 865
of January 1, 2012, or the date its obligation to provide PEG 866
channels under division (A) of this section would have expired if 867
not terminated under division (B) of section 1332.23 of the 868
Revised Code, or, if earlier and applicable, until such earlier 869
date as may be specified in an ordinance or resolution in effect 870
on the effective date of this section. The person may identify and 871
collect the amount of its costs to provide transmission capacity 872
under division (F)(2)(a) of this section as a separate line item 873
on the bills of its subscribers having service addresses in the 874
municipal corporation or unincorporated area of the township. 875

(b) During the time described in division (F)(2)(a) of this 876
section, if the municipal corporation or township requests that a 877
PEG channel origination point existing as of January 1, 2007, be 878
relocated, the person may charge the municipal corporation or 879
township for the costs of constructing that part of a transmission 880
line, connecting the person's headend or video hub office to the 881
relocated point, that extends two hundred feet beyond the headend 882
or video hub, but not for the costs associated with the 883
transmission of the PEG programming. Also, during that time, the 884
person may charge for the construction costs associated with 885
additional origination points, but not for the costs associated 886
with the transmission of the PEG programming. 887

(G) Except as otherwise provided in this section, no 888
municipal corporation or township shall require a video service 889
provider to provide any funds, services, programming, facilities, 890

or equipment related to PEG channels. PEG channel operation and 891
programming shall be the sole responsibility of the municipal 892
corporation or township. Except as otherwise provided in this 893
section, the video service provider shall bear only the 894
responsibility for the transmission to subscribers of the PEG 895
channel programming once the programming is delivered to the video 896
service provider in the appropriate format. 897

Sec. 1332.31. Not later than six months after the effective 898
date of its video service authorization, a video service provider 899
shall carry emergency interrupt service announcements transmitted 900
by local television broadcasters and shall transmit national, 901
state, and local emergency interrupt service announcements as 902
required by 47 C.F.R. 11.11 et seq. or as otherwise required by 903
the federal communications commission. 904

Sec. 1332.32. (A) Not sooner than forty-five nor later than 905
sixty days after the end of each calendar quarter, a video service 906
provider shall pay a video service provider fee to each municipal 907
corporation and each township in which it offers video service. 908
The fee shall be calculated quarterly by determining the 909
provider's gross revenue for the preceding calendar quarter as 910
described in division (B) of this section and multiplying the 911
result by the percentage specified in division (C)(1)(a) or (b) of 912
this section. 913

(B) Gross revenue shall be computed in accordance with 914
generally accepted accounting principles. 915

(1) Gross revenue shall consist of all of the following 916
revenue for the calendar quarter that is collected by the provider 917
for video service from all its subscribers having service 918
addresses within the municipal corporation or, respectively, the 919
unincorporated area of the township: 920

<u>(a) Recurring monthly charges for video service;</u>	921
<u>(b) Event-based charges for video service, including, but not limited to, pay-per-view and video-on-demand charges;</u>	922 923
<u>(c) Charges for rental of set top boxes and other video service equipment;</u>	924 925
<u>(d) Service charges related to the provision of video service, including, but not limited to, activation, installation, and repair;</u>	926 927 928
<u>(e) Administrative charges related to the provision of video service, including, but not limited to, service order and service termination charges.</u>	929 930 931
<u>(2) Gross revenue shall not include any of the following:</u>	932
<u>(a) Any taxes, fees, or assessments that are collected by the video service provider from video service subscribers for pass-through to any federal, state, or local government agency, including the video service provider fee authorized under this section, the fee authorized under division (F) of section 1332.30 of the Revised Code, and the federal communication commission user fee;</u>	933 934 935 936 937 938 939
<u>(b) Uncollectible charges, except that uncollectible charges, all or part of which are written off as bad debt but subsequently collected, less the expenses of their collection shall be included in gross revenue in the quarter collected;</u>	940 941 942 943
<u>(c) Late payment charges;</u>	944
<u>(d) Maintenance charges;</u>	945
<u>(e) Charges for services other than video service, reasonably identifiable on books or records the video service provider keeps in the regular course of business or by other reasonable means, that are aggregated or bundled with amounts billed to video service subscribers, including, but not limited to, any revenue</u>	946 947 948 949 950

received by a video service provider or its affiliates for 951
telecommunications service, information service, or the provision 952
of directory or internet advertising, including yellow pages, 953
white pages, banner advertising, and electronic publishing; 954

(f) Reimbursement by programmers of marketing costs actually 955
incurred by the video service provider; 956

(g) Advertising revenue, unless a municipal corporation 957
enacts an ordinance or a board of township trustees adopts a 958
resolution that uniformly applies to all video service providers. 959
For those purposes, "advertising revenue" means the net revenue 960
received by the video service provider for advertising on its 961
subscription-based video service within a municipal corporation or 962
the unincorporated area of a township. If such revenue is derived 963
under a regional or national compensation contract or arrangement 964
between the video service provider and one or more advertisers or 965
advertising representatives, the amount of revenue derived for a 966
municipal corporation or for the unincorporated area of a township 967
shall be determined by multiplying the total net revenue received 968
by the video service provider under the contract or arrangement by 969
the percentage resulting from dividing the number of subscribers 970
in the municipal corporation or unincorporated area of a township 971
by the total number of regional or national subscribers that 972
potentially receive the advertising under the contract or 973
arrangement. The municipal corporation or township shall promptly 974
notify affected video service providers of the ordinance or 975
resolution, which shall not take effect until the first day of the 976
first calendar quarter that begins more than thirty days after the 977
notice. 978

(h) Subject to division (B)(2)(g) of this section, any 979
revenue not expressly enumerated in division (B)(1) of this 980
section. 981

(C)(1)(a) If in the calendar quarter a franchise fee is 982

payable by a cable operator under a franchise in effect in a 983
municipal corporation or township as provided under division (B) 984
of section 1332.23 of the Revised Code, the percentage of gross 985
revenue payable in that calendar quarter by a video service 986
provider to the municipal corporation or township shall be the 987
same percentage of gross revenue payable in that calendar quarter 988
pursuant to that franchise, not to exceed five per cent. If there 989
is more than one such franchise of a cable operator in effect in 990
that quarter, the lowest such percentage shall be used. 991

(b) Otherwise, the percentage shall be zero or such higher 992
percentage, not to exceed five per cent, as is specified in an 993
ordinance or resolution that the municipal corporation or township 994
may enact or adopt for the purpose of this section. 995

(2) The municipal corporation or township shall provide 996
written notice to the video service provider of the appropriate 997
percentage under division (C)(1)(a) or (b) of this section within 998
ten days after it receives the initial service notice under 999
division (A) of section 1332.27 of the Revised Code that the video 1000
service provider will commence to provide access to video service 1001
in the municipal corporation or unincorporated area of the 1002
township. A provider need not pay the fee unless the municipal 1003
corporation or township provided that notice. 1004

(D) A video service provider that pays a video service 1005
provider fee pursuant to this section may identify and collect the 1006
amount of that fee as a separate line item on the regular bill of 1007
each of its video service subscribers that has a service address 1008
within any portion of the municipal corporation or, respectively, 1009
within the unincorporated area of the township. 1010

Sec. 1332.33. (A) At its sole expense and not more often than 1011
once per calendar year, a municipal corporation or township may 1012
conduct an audit for the purpose of verifying the accuracy of a 1013

video service provider's calculation of the video service provider 1014
fees it paid to the municipal corporation or township in the audit 1015
period. For the purpose of the audit, the video service provider 1016
shall make available for inspection, at the location where such 1017
records are kept in the normal course of business, those records 1018
pertaining to its gross revenue as defined in division (B) of 1019
section 1332.32 of the Revised Code. The provider need not retain 1020
those records for longer than three years after the year for which 1021
the fee was payable, unless the municipal corporation or township 1022
has commenced an action under division (C) of this section. 1023

(B) A video service provider shall pay any amounts found to 1024
have been underpaid in the audit within thirty days after notice 1025
and shall include interest on the underpayments as provided in 1026
section 1343.03 of the Revised Code. 1027

(C)(1) No municipal corporation or township shall employ, 1028
appoint, or retain any person to conduct an audit under division 1029
(A) of this section for compensation that is dependent on the 1030
dollar amount of the audit findings. Division (C) of this section 1031
shall not prohibit or limit the hiring of legal counsel on a 1032
contingency fee basis to enforce the findings of an audit. 1033

(2) No person shall solicit or accept compensation that is 1034
dependent in any manner upon the outcome of an audit under 1035
division (A) of this section, including compensation dependent on 1036
the audit findings or the recovery of fees or other payment by the 1037
municipal corporation, township, or video service provider. 1038

(D) An action by the municipal corporation or township or by 1039
the video service provider to dispute the amount of video service 1040
provider fee due based on the audit results shall be brought in a 1041
court of competent jurisdiction not later than two years following 1042
the end of the quarter to which the disputed amount relates. 1043

(E) A municipal corporation or township shall be deemed to 1044

accept as full payment any payment of a video service provider fee 1045
that it does not challenge as provided under division (D) of this 1046
section. 1047

Sec. 1332.34. Nothing in sections 1332.21 to 1332.33 of the 1048
Revised Code is intended to be inconsistent with the "Cable 1049
Communications Policy Act of 1984," 98 Stat. 2779, 47 U.S.C. 521 1050
to 573. 1051

Section 2. That existing section 153.64 and sections 505.90, 1052
505.91, and 505.92 of the Revised Code are hereby repealed. 1053