

As Reported by the Senate Energy and Public Utilities Committee

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Sub. S. B. No. 117

Senator Jacobson

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

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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, 18

township, municipal corporation, school district, or other 19
political subdivision, or any public agency, authority, board, 20
commission, instrumentality, or special district of or in the 21
state or a county, township, municipal corporation, school 22
district, or other political subdivision. 23

(3) "Underground utility facilities" includes any item buried 24
or placed below ground or submerged under water for use in 25
connection with the storage or conveyance of water or sewage; or 26
electronic, telephonic, or telegraphic communications; 27
electricity; electric energy; petroleum products; manufactured, 28
mixed, or natural gas; synthetic or liquified natural gas; propane 29
gas; or other substances. "Underground utility facilities" 30
includes, but is not limited to, all operational underground 31
pipes, sewers, tubing, conduits, cables, valves, lines, wires, 32
manholes, and attachments, whether owned by any public or private 33
or profit or nonprofit person, firm, partnership, company, 34
corporation, joint stock association, joint venture, or voluntary 35
association, wherever organized or incorporated, except for a 36
private septic system in a single- or double-family dwelling 37
utilized only for that dwelling and not connected to any other 38
system. 39

(4) "Underground utility protection service" means a 40
notification center not an owner of an underground utility 41
facility, existing for the purpose of receiving notice from public 42
authorities and from other persons that plan to prepare plans and 43
specifications for, or engage in, public improvements involving 44
digging, blasting, excavating, or other underground construction 45
activities and distributing this information to its members. 46
"Registered underground utility protection service" means an 47
underground utility protection service registered with the 48
secretary of state and the public utilities commission of Ohio 49
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 114

requirements of division (B) of this section, the contractor to 115
whom the work is awarded or its subcontractor complies with the 116
requirements of division (C) of this section, and the contractor 117
or its subcontractor encounters underground utility facilities in 118
the construction area that would have been shown on the plans and 119
specifications for such improvement had the registered underground 120
utility protection service or owner of the underground utility 121
facility who is not a member of a registered underground utility 122
protection service whose name, address, and telephone number is 123
provided by the public authority been contacted, then the 124
contractor, upon notification to the public authority, is entitled 125
to an increase to the contract price for itself or its 126
subcontractor for any additional work that must be undertaken or 127
additional time that will be required and is entitled to an 128
extension of the completion date of the contract for the period of 129
time of any delays to the construction of the public improvement. 130

In the event of a dispute as to the application of this 131
section, procedures may be commenced under the applicable terms of 132
the construction contract, or if the contract contains no 133
provision for final resolution of the dispute, pursuant to the 134
procedures for arbitration in Chapter 2711. of the Revised Code. 135

This section does not affect rights between the contractors 136
and the public authority for any increase in contract price or 137
additional time to perform the contract when the public authority 138
complies with division (B) of this section. 139

Any public authority who complies with the requirements of 140
division (B) of this section and any contractor or its 141
subcontractor who complies with the requirements of division (C) 142
of this section shall not be responsible to the owner of the 143
underground utility facility if underground utility lines are 144
encountered not as marked in accordance with the provisions of 145
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 an owner or landlord or other responsible 182
person has granted entrance or a subscriber has ordered the 183
service. 184

(B) "Basic local exchange service" has the same meaning as in 185
section 4927.01 of the Revised Code. 186

(C) "Cable operator," "cable service," "cable system," 187
"franchise," and "franchising authority" have the same meanings as 188
in the "Cable Communications Policy Act of 1984," Pub. L. No. 189
98-549, 98 Stat. 2780, 2781, 47 U.S.C. 522, as amended by the 190
"Telecommunications Act of 1996," Pub. L. No. 104-104, 110 Stat. 191
56. 192

(D) "Competitive video service agreement" means any 193
agreement, memorandum of understanding, or other document that 194
provides or has the effect of providing, whether or not as a 195
franchise, authorization by a municipal corporation or township 196
for the provision of video service within its boundaries by a 197
person using telecommunications facilities to provide that 198
service. 199

(E) "Household" means, consistent with the regulations of the 200
United States census bureau, a house, an apartment, a mobile home, 201
a group of rooms, or a single room that is intended for occupancy 202
as separate living quarters. "Separate living quarters" are those 203
in which the occupants live and eat separately from any other 204
persons in the building and that have direct access from the 205
outside of the 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 subscribers by a commercial mobile service 228
provider, as defined in the "Telecommunications Act of 1996," Pub. 229
L. No. 104-104, Title VII, Sections 704(a) and 705, 110 Stat. 61, 230
151, 153, 47 U.S.C. 332; video programming provided solely as part 231
of and via a service that enables users to access content, 232
information, electronic mail, or other services offered over the 233
public internet; and signals distributed by a cable television 234
system to paying subscribers in the unincorporated area of a 235
township prior to October 1, 1979, as authorized under section 236
505.91 of the Revised Code as that section existed prior to its 237
repeal by S.B. 117 of the 127th general assembly, unless a 238
franchise was subsequently issued to the same company as 239

<u>authorized under that section.</u>	240
<u>(K) "Video service area" means the service area specified</u>	241
<u>pursuant to divisions (A) and (B) of section 1332.25 of the</u>	242
<u>Revised Code.</u>	243
<u>(L) "Video service network" means wires or cables and</u>	244
<u>associated facilities or components used to deliver video service</u>	245
<u>and includes a cable system.</u>	246
<u>(M) "Video service provider" means a person granted a video</u>	247
<u>service authorization under sections 1332.21 to 1332.34 of the</u>	248
<u>Revised Code.</u>	249
<u>Sec. 1332.22. The general assembly finds and declares all of</u>	250
<u>the following for the purposes of sections 1332.21 to 1332.34 of</u>	251
<u>the Revised Code:</u>	252
<u>(A) Video service brings significant daily benefits to this</u>	253
<u>state by providing news, education, and entertainment.</u>	254
<u>(B) This state's economy will be enhanced by investment in</u>	255
<u>new communications and video programming infrastructure, including</u>	256
<u>fiber optic and internet protocol technologies.</u>	257
<u>(C) Enhancing the existing broadband infrastructure and</u>	258
<u>increasing consumer access to robust and reliable broadband</u>	259
<u>products and services are also important, statewide public</u>	260
<u>purposes.</u>	261
<u>(D) To date, there has been only minimal competitive entry by</u>	262
<u>telephone companies into the facilities-based video programming</u>	263
<u>market in this state, in part, because local franchise</u>	264
<u>requirements may present barriers to entry.</u>	265
<u>(E) Increased competition in the provision of video service</u>	266
<u>will provide new and more video programming choices for consumers</u>	267
<u>in this state, and new providers have stated their desire to</u>	268
<u>supply that service.</u>	269

<u>(F) The time-to-market interval is critical for new entrants seeking to compete with incumbents.</u>	270
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<u>(G) Local franchise and other requirements may present inordinate delays for new entrants.</u>	272
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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>	274
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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>	280
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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>	283
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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>	287
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<u>Sec. 1332.23.</u> <u>(A) 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 or pursuant to the terms and conditions of a franchise, competitive video service agreement, or other authorization only as provided under division (B)(1)(a) or</u>	294
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(b) of this section. Such person includes a person operating or 300
proposing to operate a video service network using 301
telecommunications facilities located in public rights-of-way 302
pursuant to a certificate, a franchise other than a video service 303
authorization, a competitive video service agreement, an 304
ordinance, or a resolution that authorizes construction and 305
operation of those facilities to provide telecommunications 306
service. 307

(B)(1)(a) Solely at the option of a person that offers 308
service under a franchise or competitive video service agreement 309
in effect on the effective date of this section, the person may 310
continue on and after that date to provide service within the 311
franchise area or the respective municipal corporation or 312
unincorporated area of a township pursuant to the terms and 313
conditions of the franchise or agreement, except as otherwise 314
provided in section 1332.30 of the Revised Code. However, no such 315
franchise or agreement shall be renewed or extended beyond the 316
existing term of the franchise or agreement or its earlier 317
termination pursuant to the terms and conditions of the respective 318
franchise or agreement. 319

(b) Any person that is providing video service in this state 320
on the effective date of this section pursuant to the terms and 321
conditions of an expired franchise or competitive video service 322
agreement, or is otherwise providing video service, has ninety 323
days beginning on the effective date of this section to file an 324
application for a video service authorization under section 325
1332.25 of the Revised Code. 326

(2) A person that offers service under a franchise or 327
competitive video service agreement pursuant to division (B)(1)(a) 328
of this section may apply at any time under section 1332.25 of the 329
Revised Code for a video service authorization to provide video 330
service within this state. Upon the effective date of the video 331

service authorization, the franchise or competitive video service 332
agreement terminates and no provision of that franchise or 333
agreement is enforceable. 334

(C) Video service constitutes cable service over a cable 335
system for the purposes of sections 1332.01 to 1332.10 of the 336
Revised Code. A municipal corporation that receives a video 337
service provider fee described in section 1332.32 of the Revised 338
Code constitutes a municipal corporation that charges a franchise 339
fee and a video service authorization described in section 1332.24 340
of the Revised Code constitutes a franchise between a cable 341
operator and a municipal corporation for purposes of sections 342
4939.05 and 4939.08 of the Revised Code. 343

Sec. 1332.24. (A)(1) In accordance with section 1332.25 of 344
the Revised Code, the director of commerce may issue to any 345
person, or renew, a video service authorization, which 346
authorization confers on the person the authority to provide video 347
service in its video service area; construct and operate a video 348
service network in, along, across, or on public rights-of-way for 349
the provision of video service; and, when necessary to provide 350
that service, exercise the power of a telegraph company under 351
section 4931.04 of the Revised Code. The term of a video service 352
authorization or authorization renewal shall be ten years. 353

(2) For the purposes of the "Cable Communications Policy Act 354
of 1984," Pub. L. No. 98-549, 98 Stat. 2779, 47 U.S.C. 521 et 355
seq., a video service authorization shall constitute a franchise 356
under that law, and the director shall be the sole franchising 357
authority under that law for video service authorizations in this 358
state. 359

(B)(1) The director may investigate alleged violations of or 360
failures to comply with division (A) of section 1332.23, division 361
(C) of section 1332.25, division (A), (B), or (C) of section 362

1332.27, division (A) of section 1332.28, division (A) or (B) of 363
section 1332.29, or sections 1332.30 and 1332.31 of the Revised 364
Code, or complaints concerning any such violation or failure. 365
Except as provided in this section, the director has no authority 366
to regulate video service in this state, including, but not 367
limited to, the rates, terms, or conditions of that service. 368

(2) In conducting an investigation under division (B)(1) of 369
this section, the director, by subpoena, may compel witnesses to 370
testify in relation to any matter over which the director has 371
jurisdiction and may require the production of any book, record, 372
or other document pertaining to that matter. If a person fails to 373
file any statement or report, obey any subpoena, give testimony, 374
produce any book, record, or other document as required by a 375
subpoena, or permit photocopying of any book, record, or other 376
document subpoenaed, the court of common pleas of any county in 377
this state, upon application made to it by the director, shall 378
compel obedience by attachment proceedings for contempt, as in the 379
case of disobedience of the requirements of a subpoena issued from 380
the court or a refusal to testify. 381

(3) If the director finds that a person has violated or 382
failed to comply with division (A) of section 1332.23, division 383
(C) of section 1332.25, division (A), (B), or (C) of section 384
1332.27, division (A) of section 1332.28, division (A) or (B) of 385
section 1332.29, or sections 1332.30 and 1332.31 of the Revised 386
Code, and the person has failed to cure the violation or failure 387
after reasonable, written notice and reasonable time to cure, the 388
director may apply to the court of common pleas of any county in 389
this state for an order enjoining the activity or requiring 390
compliance. Such an action shall be commenced not later than three 391
years after the date the alleged violation or failure occurred or 392
was reasonably discovered. Upon a showing by the director that the 393
person has engaged in a violation or failure to comply, the court 394

shall grant an injunction, restraining order, or other appropriate relief. 395
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(C) The public utilities commission has no authority over a video service provider in its offering of video service or a cable operator in its offering of cable or video service, or over any person in its offering of video service pursuant to a competitive video service agreement. 397
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Sec. 1332.25. (A) An application made to the director of commerce for a video service authorization under section 1332.24 of the Revised Code shall require and contain only the following: 402
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(1) Specification of the location of the applicant's principal place of business and the names of the applicant's principal executive officers; 405
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(2) Specification of the geographic and political boundaries of the applicant's proposed video service area; 408
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(3) A general description of the type or types of technologies the applicant will use to deliver the video programming, which may include wireline, wireless, or any other alternative technology, subject, as applicable, to section 1332.29 of the Revised Code; 410
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(4) An attestation that the applicant has filed or will timely file with the federal communications commission all forms required by that agency in advance of offering video service in this state; 415
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(5) An attestation that the applicant will comply with applicable federal, state, and local laws; 419
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(6) An attestation that the applicant is legally, financially, and technically qualified to provide video service; 421
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(7) A description of the applicant's customer complaint handling process, including policies on addressing customer 423
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service issues, billing adjustments, and communication with 425
government officials regarding customer complaints, and a local or 426
toll-free telephone number at which a customer may contact the 427
applicant. 428

(B) For the purpose of division (A)(2) of this section: 429

(1) The video service areas of video service providers may 430
overlap. 431

(2) A specified video service area shall be coextensive with 432
municipal, township unincorporated area, or county boundaries, 433
except as authorized under division (B)(3) or (4) of this section, 434
but nothing in sections 1332.21 to 1332.34 of the Revised Code 435
shall require a video service provider to provide access to video 436
service within the entire video service area. 437

(3) The specified video service area of a person using 438
telecommunications facilities to provide video service on the 439
effective date of this section or of any other person later so 440
using telecommunications facilities shall be the geographic area 441
in which the person offers basic local exchange service. 442

(4) The specified video service area of an applicant cable 443
operator that offers service under a franchise in effect on the 444
effective date of this section initially shall be, at minimum, the 445
franchise area established under that franchise. 446

(C) A video service provider shall immediately file an 447
application to amend its video service authorization with the 448
director to reflect any change in the information required under 449
division (A)(1), (2), or (3) of this section. An amendment 450
pursuant to division (A)(2) of this section shall include any new 451
delivery technology information required by division (A)(3) of 452
this section. 453

(D) Within ten days after its filing or within ten days after 454
the filing of supplemental information necessary to make it 455

complete, the director shall determine the completeness of an 456
application filed under division (A) or (C) of this section 457
relative to the respective requirements of divisions (A), (B), and 458
(C) of this section and, as applicable, shall notify the applicant 459
of an incompleteness determination, state the bases for that 460
determination, and inform the applicant that it may resubmit a 461
corrected application. The director shall issue a video service 462
authorization, authorization renewal, or amended authorization 463
within twenty days after the director's determination that the 464
filed application is complete. 465

If the director does not notify the applicant regarding the 466
completeness of the application within the time period specified 467
in this division or does not issue the authorization requested by 468
a completed application within the applicable time period, the 469
application shall be deemed complete, and the authorization or 470
amended authorization deemed issued on the thirty-first day after 471
the application's filing date. 472

(E) An applicant shall pay a two thousand dollar 473
nonrefundable fee for each application filed under division (A) of 474
this section and a one hundred dollar nonrefundable fee for each 475
application to amend filed under division (C) of this section. 476

Sec. 1332.26. (A) No political subdivision shall require a 477
video service provider to obtain from it any authority to provide 478
video service within its boundaries. 479

(B) Except as authorized under division (C) of this section 480
and under sections 1332.30 and 1332.32 of the Revised Code, no 481
political subdivision shall request anything of value from a video 482
service provider for providing video service; impose any fee, 483
license, or gross receipt tax on the provision of video service by 484
such a provider; or impose any franchise or other requirement on 485
the provision of video service by a video service provider, 486

including, but not limited to, any provision regulating rates 487
charged by a video service provider or establishing any build-out 488
requirement or requirement to deploy any facility or equipment. 489

(C)(1) A municipal corporation or township by ordinance or 490
resolution may require a video service provider providing video 491
service within its respective boundaries to conform its provision 492
of that service to customer service requirements that are 493
consistent with and not more stringent than those specified in 47 494
C.F.R. 76.309(c). 495

(2) Division (C)(1) of this section does not apply if there 496
are two or more persons offering video service, excluding 497
providers of direct-to-home satellite service, within the 498
respective boundaries or if the video service provider is subject 499
to effective competition, as defined in 47 C.F.R. 76.905, in its 500
video service area. 501

Sec. 1332.27. (A) Before providing video service to one or 502
more subscribers within its video service area or any additional 503
video service area under division (C) of section 1332.25 of the 504
Revised Code, a video service provider shall provide ten days' 505
advance, written notice of that service or additional service to 506
the respective municipal corporation or township. 507

(B) A video service provider may transfer its video service 508
authorization to a successor. Within ten days after completing the 509
transfer, the provider shall provide written notice to the 510
respective municipal corporation or township. The transfer is not 511
valid until the date that the successor files a complete affidavit 512
with the director of commerce containing the information specified 513
in division (A) of section 1332.25 of the Revised Code. The 514
director has no authority to act upon the notice or the completed 515
affidavit. 516

(C) A video service provider may terminate video service to 517

its video service area, but only after providing thirty days' 518
advance, written notice to the director, affected subscribers, and 519
the respective municipal corporations or townships comprising the 520
video service area. The director has no authority to act upon the 521
notice. 522

Sec. 1332.28. (A) Consistent with the "Telecommunications Act 523
of 1996," Pub. L. No. 104-104, Title III, Sections 303(a), 110 524
Stat. 61, 124, 47 U.S.C. 541(a)(3) and to prohibit discriminatory 525
practices against a group of potential residential subscribers, no 526
video service provider shall deny access to video service to any 527
group of potential residential subscribers in its video service 528
area because of the race or income of the residents in the local 529
area in which the group resides. 530

(B) It is an affirmative defense to a violation of division 531
(A) of this section if the video service provider can demonstrate 532
either of the following: 533

(1) Three years after the date it began providing video 534
service in its video service area, at least twenty-five per cent 535
of households with access to the provider's video service are 536
low-income households. 537

(2) Five years after the date it began providing video 538
service in its video service area and thereafter, at least thirty 539
per cent of the households with access to the provider's video 540
service are low-income households. 541

Sec. 1332.29. (A)(1) A video service provider that both uses 542
telecommunications facilities to provide video service and has 543
more than one million telephone access lines in this state shall 544
provide access to video service to at least: 545

(a) Twenty-five per cent of the households in its video 546
service area within two years after the date it began providing 547

video service in that area; 548

(b) Fifty per cent of the households in its video service 549
area within five years after the date it began providing video 550
service in that area, except that a video service provider need 551
not meet that fifty per cent requirement until two years after at 552
least thirty per cent of the households with access to the 553
provider's video service under its video service authorization 554
subscribe to the service for six consecutive months. 555

(2) A video service provider may comply with division 556
(A)(1)(a) or (b) of this section through the use of alternative 557
technology, except satellite technology, that offers service, 558
functionality, and content demonstrably similar to the service, 559
functionality, and content the provider otherwise provides through 560
its video service network. 561

(B) A video service provider shall file an annual report with 562
the director of commerce describing its compliance with division 563
(A) of this section or, as applicable, its progress toward that 564
compliance. 565

(C) A video service provider may apply to the director for a 566
waiver of or for an extension of time to comply with division 567
(A)(1) of this section. The director may grant the waiver or 568
extension only if the director determines that the video service 569
provider has made substantial and continual effort to comply and 570
determines that one or more of the following caused the provider's 571
inability to comply: 572

(1) The provider is unable to obtain access to public and 573
private rights-of-way under reasonable terms and conditions. 574

(2) Developments or buildings are not subject to competition 575
because of existing, exclusive service arrangements. 576

(3) Developments or buildings are inaccessible using 577
reasonable technical solutions under commercially reasonable terms 578

and conditions. 579

(4) A natural disaster prevents compliance. 580

(5) There are other factors beyond the provider's control. 581

If an extension of time is granted, the director shall 582
establish a new compliance deadline. If a waiver is granted, the 583
director shall specify the requirement or requirements waived. 584

Sec. 1332.30. (A) If a municipal corporation or township has 585
PEG channels programmed on January 1, 2007, any person providing 586
video service in the municipal corporation or township on that 587
date shall continue providing those PEG channels whether the 588
person provides video service pursuant to a franchise, competitive 589
video service agreement, ordinance, or resolution or pursuant to a 590
video service authorization issued under section 1332.24 of the 591
Revised Code. If the municipal corporation or township has three 592
or more PEG channels programmed on January 1, 2007, the person 593
shall provide two PEG channels on the person's basic service tier 594
and shall provide additional PEG channels on the person's basic 595
service tier or on any service tier viewed by more than fifty per 596
cent of the subscribers in the video service area. If the 597
municipal corporation or township has one or two PEG channels 598
programmed on January 1, 2007, the person shall provide one PEG 599
channel on the person's basic service tier and shall provide any 600
other PEG channel on the person's basic service tier or on any 601
service tier viewed by more than fifty per cent of the subscribers 602
in the video service area. Any other person providing video 603
service in the municipal corporation or township on or after the 604
effective date of this section shall provide the same number of 605
PEG channels under the same service tier conditions as those 606
required of the incumbent person. A PEG channel required under 607
this division may be reclaimed if a municipal corporation or 608
township has three or more PEG channels programmed on January 1, 609

2007, the channel is provided on a nonbasic service tier, and the 610
channel is not substantially utilized as defined under division 611
(E) of this section. However, for each provider, one such channel 612
may not be reclaimed. Nothing in this division precludes a 613
provider and a municipal corporation or township from entering 614
into other arrangements for PEG channels. 615

(B) This division applies to a municipal corporation or a 616
township that has no PEG channels programmed on January 1, 2007. 617
Any municipal corporation or township to which this division 618
applies that lies within a video service provider's video service 619
area may require the video service provider by written notice to 620
provide PEG channels. Following such a request, a video service 621
provider shall provide the PEG channels one hundred twenty days 622
after the municipal corporation or township is able to deliver the 623
PEG channel content. The provider may use any service tier viewed 624
by more than fifty per cent of the subscribers in the video 625
service area to provide the PEG channels. 626

(1) Except as provided in division (B)(2) of this section, 627
the number of required PEG channels shall not exceed three if the 628
respective municipal corporation or township has a population of 629
at least fifty thousand, or two if the population is less than 630
fifty thousand. If there is more than one video service provider 631
providing PEG channels in the municipal corporation or township, 632
the number of channels shall be the same for all the video service 633
providers. 634

(2) If a video service provider distributes video programming 635
to more than one municipal corporation or township through a 636
single headend or video hub office and the aggregate population of 637
the municipal corporations or townships is at least fifty 638
thousand, none of those municipal corporations or townships shall 639
require the provider to provide, in the aggregate, channel 640
capacity for more than three PEG channels. If the aggregate 641

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

(C) No municipal corporation or township shall require a video service provider to provide any institutional network on its video service network. However, a video service provider that was an incumbent cable operator required to provide any institutional network on January 1, 2007, shall continue to provide the institutional network until the franchise would have expired if not terminated under section 1332.23 of the Revised Code, or until January 1, 2012, whichever is earlier. If the franchise included terms regarding the infrastructure of the institutional network upon the expiration of the franchise, the video service provider shall honor those terms. Nothing in this division precludes such a video service provider and a municipal corporation or township from entering into other arrangements for institutional networks.

(D) The municipal corporation or township shall ensure that any PEG channel content and programming it submits to a video service provider is compatible with the technology or protocol the provider uses to deliver video service, and shall not require or necessitate any alteration or change in content or transmission signal.

(E) A video service provider may reclaim and program a PEG channel under division (B) of this section that it determines is not substantially utilized. At such time as the municipal corporation or township that caused the establishment of the PEG channel can later certify that the channel will be substantially utilized, the video service provider, within one hundred twenty days after the date the video service provider receives that certification, shall restore the reclaimed channel as a PEG channel. However, the provider shall be under no obligation to carry that channel on any specified tier of service. For the

purpose of this division, a PEG channel is "substantially
utilized" when at least forty hours of noncharacter-generated
content are programmed on that channel each week and at least
sixty per cent of the programming is nonrepeat and locally
produced. 674
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(F)(1) After January 1, 2007, and until the expiration of an
incumbent cable operator's franchise or January 1, 2012, whichever
is earlier, if the incumbent cable operator has existing
unsatisfied obligations under a franchise to remit to a municipal
corporation or township cash payments for the ongoing costs of PEG
channel facilities, the municipal corporation or township shall
charge all video service providers providing service to the
municipal corporation or township a pro rata per subscriber share
of the total payment. All video service providers and the
incumbent cable operator shall be subject to any recurring payment
requirements, whether expressed as a percentage of gross revenue
or as an amount per subscriber, per month, or otherwise. A video
service provider may charge its subscribers a fee to recover these
costs. 679
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(2) In determining the pro rata per subscriber share, all
video service providers and the incumbent cable operator shall
report, for the period in question, to the municipal corporation
or township the total number of subscribers served within the
respective municipal corporation or township. This information
shall be treated as confidential by the municipal corporation or
township and shall be used only to derive the pro rata per
subscriber share. The municipal corporation or township shall
determine the share of each video service provider and the cable
operator by multiplying the unsatisfied cash payments by a ratio
of the reported subscribers of each and the total subscribers
within the municipal corporation or township as of the end of the
applicable period. 693
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(3) The municipal corporation or township shall notify each video service provider and the cable operator, in writing, of its respective resulting pro rata share. The video service provider or operator shall remit its share to the applicable municipal corporation or township quarterly, within forty-five days after the end of the preceding calendar quarter. The municipal corporation or township shall use the payments only as authorized under federal law.

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

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

Sec. 1332.32. (A) Not sooner than forty-five days after the end of each calendar quarter, a video service provider shall pay a video service provider fee to each municipal corporation and each township in which it offers video service. The fee shall be calculated quarterly by determining the provider's gross revenue for the preceding calendar quarter as described in division (B) of

this section and multiplying the result by the percentage 737
specified in division (C)(1) or (2) of this section. 738

(B) Gross revenue shall be computed in accordance with 739
generally accepted accounting principles. 740

(1) Gross revenue shall consist of all of the following 741
revenue for the calendar quarter that is collected by the provider 742
for video service from all its subscribers having a service 743
address within any portion of the municipal corporation or, 744
respectively, the unincorporated area of the township: 745

(a) Recurring monthly charges for video service; 746

(b) Event-based charges for video service, including, but not 747
limited to, pay-per-view and video-on-demand charges; 748

(c) Charges for rental of set top boxes and other video 749
service equipment; 750

(d) Service charges related to the provision of video 751
service, including, but not limited to, activation, installation, 752
and repair; 753

(e) Administrative charges related to the provision of video 754
service, including, but not limited to, service order and service 755
termination charges. 756

(2) Gross revenue shall not include any of the following: 757

(a) Any taxes, fees, or assessments that are collected by the 758
video service provider from video service subscribers for 759
pass-through to any federal, state, or local government agency, 760
including the video service provider fee authorized under this 761
section, the fee authorized under division (F) of section 1332.30 762
of the Revised Code, and the federal communication commission user 763
fee; 764

(b) Uncollectible charges, except that uncollectible charges, 765
all or part of which are written off as bad debt but subsequently 766

collected, less the expenses of their collection shall be included 767
in gross revenue in the quarter collected; 768

(c) Late payment charges; 769

(d) Maintenance charges; 770

(e) Charges for services other than video service, reasonably 771
identifiable on books or records the video service provider keeps 772
in the regular course of business or by other reasonable means, 773
that are aggregated or bundled with amounts billed to video 774
service subscribers, including, but not limited to, any revenue 775
received by a video service provider or its affiliates for 776
telecommunications service, information service, or the provision 777
of directory or internet advertising, including yellow pages, 778
white pages, banner advertising, and electronic publishing; 779

(f) Reimbursement by programmers of marketing costs actually 780
incurred by the video service provider; 781

(g) Advertising revenue, unless a municipal corporation 782
enacts an ordinance or a board of township trustees adopts a 783
resolution that uniformly applies to all video service providers. 784
For those purposes, "advertising revenue" means the net revenue 785
received by the video service provider for advertising on its 786
subscription-based video service within a municipal corporation or 787
the unincorporated area of a township. If such revenue is derived 788
under a regional or national compensation contract or arrangement 789
between the video service provider and one or more advertisers or 790
advertising representatives, the amount of revenue derived for a 791
municipal corporation or for the unincorporated area of a township 792
shall be determined by multiplying the total net revenue received 793
by the video service provider under the contract or arrangement by 794
the percentage resulting from dividing the number of subscribers 795
in the municipal corporation or unincorporated area of a township 796
by the total number of regional or national subscribers that 797

potentially receive the advertising under the contract or 798
arrangement. The municipal corporation or township shall promptly 799
notify affected video service providers of the ordinance or 800
resolution, which shall not take effect until the first day of the 801
first calendar quarter that begins more than thirty days after the 802
notice. 803

(h) Subject to division (B)(2)(g) of this section, any 804
revenue not expressly enumerated in division (B)(1) of this 805
section. 806

(C)(1) If in the calendar quarter a franchise fee is payable 807
by a cable operator under a franchise in effect in a municipal 808
corporation or township as provided under division (B) of section 809
1332.23 of the Revised Code, the percentage of gross revenue 810
payable in that calendar quarter by a video service provider to 811
the municipal corporation or township shall be the same percentage 812
of gross revenue payable in that calendar quarter pursuant to that 813
franchise, not to exceed five per cent. If there is more than one 814
such franchise of a cable operator in effect in that quarter, the 815
lowest such percentage shall be used. 816

(2) Otherwise, the percentage shall be zero or such higher 817
percentage, not to exceed five per cent, as is specified in an 818
ordinance or resolution that the municipal corporation or township 819
may enact or adopt for the purpose of this section. 820

(D) A video service provider that pays a video service 821
provider fee pursuant to this section may include that fee in the 822
regular bill of each of its video service subscribers that has a 823
service address within any portion of the municipal corporation 824
or, respectively, within the unincorporated area of the township. 825

Sec. 1332.33. (A) At its sole expense and not more often than 826
once per calendar year, a municipal corporation or township may 827
conduct an audit for the purpose of verifying the accuracy of a 828

video service provider's calculation of the video service provider 829
fees it paid to the municipal corporation or township in the audit 830
period. For the purpose of the audit, the video service provider 831
shall make available for inspection, at the location where such 832
records are kept in the normal course of business, those records 833
pertaining to its gross revenue as defined in division (B) of 834
section 1332.32 of the Revised Code. The provider need not retain 835
those records for longer than three years after the year for which 836
the fee was payable, unless the municipal corporation or township 837
has commenced an action under division (C) of this section. 838

(B)(1) No municipal corporation or township shall employ, 839
appoint, or retain any person for compensation that is dependent 840
in any manner upon the outcome of an audit under division (A) of 841
this section, including compensation dependent on the audit 842
findings or the recovery of fees or other payment. 843

(2) No person shall solicit or accept compensation that is 844
dependent in any manner upon the outcome of an audit under 845
division (A) of this section, including compensation dependent on 846
the audit findings or the recovery of fees or other payment by the 847
municipal corporation, township, or video service provider. 848

(C) An action by the municipal corporation or township or by 849
the video service provider to dispute the amount of video service 850
provider fee due based on the audit results shall be brought in a 851
court of competent jurisdiction not later than two years following 852
the end of the quarter to which the disputed amount relates. 853

(D) A municipal corporation or township shall be deemed to 854
accept as full payment any payment of a video service provider fee 855
that it does not challenge as provided under division (C) of this 856
section. 857

Sec. 1332.34. Nothing in sections 1332.21 to 1332.33 of the 858
Revised Code is intended to be inconsistent with the "Cable 859

Communications Policy Act of 1984," 98 Stat. 2779, 47 U.S.C. 521 860
to 573. 861

Section 2. That existing section 153.64 and sections 505.90, 862
505.91, and 505.92 of the Revised Code are hereby repealed. 863