

May 17, 2006

H 2047. VIDEO SERVICE COMPETITION ACT. Filed 5/17/06. *TO PROMOTE CONSUMER CHOICE IN VIDEO SERVICE PROVIDERS AND TO ESTABLISH UNIFORM TAXES FOR VIDEO PROGRAMMING SERVICES.* As explained in more detail below, this act (1) replaces the current, inconsistent tax system for video programming services by subjecting them uniformly to a 7% state sales tax, (2) in order to replace revenue lost from the repealed local tax, distributes part of the state sales taxes on telecommunications and video programming services to local governments, (3) replaces the current system of locally negotiated cable franchises with a state franchise system that applies to those cable services for which franchise regulation is required by federal law, (4) preserves local regulation of public rights of way, and (5) provides for public, educational, and government channel (PEG channel) support and growth. The act is effective January 1, 2007.

Taxation. Amends GS 105-164.3 to define video programming to include all programming comparable to television broadcast, regardless of provider. Amends GS 105-164.3 to apply the existing 7% state sales tax to gross receipts derived from video programming service provided to a subscriber in NC. Repeals GS 153A-154 and GS 160A-214, which currently authorize counties and cities, respectively, to impose a local franchise tax on cable services. Amends GS 105-164.44F and enacts new GS 105-164.44I to (1) increase the amount distributed to local governments from sales tax on telecommunications services and (2) distribute to local governments a portion of the sales taxes on video programming services. The distributions would be made quarterly and would be allocated among counties and cities according to specified formulas. Provides that the General Assembly finds that the funds distributed are local revenues and not state revenues for the purpose of the Governor's constitutional power to provide for a balanced budget, and therefore the Governor may not reduce or withhold the distributions. Makes technical and conforming changes (1) relating to bundled transactions in GS 105-164.4C(d) and GS 105-164.12B, (2) by repealing GS 105-164.21B (franchise tax credit), and (3) in GS 160A-211 to prohibit cities from taxing video programming services.

State franchise for cable television service. The act repeals GS 153A-137 and amends GS 160A-319(a) to eliminate the authority of counties and cities, respectively, to franchise cable television services. Enacts new Article 42 of GS Chapter 66 to designate the NC Utilities Commission as the exclusive NC franchising authority for cable service provided over a cable system, as defined in federal law. The franchising requirement applies only to cable service that is required by federal law to be franchised. The state franchise system requires a person to file a notice of service in order to receive a state franchise. Service must commence within 120 days after filing the notice of service and must provide a report of initial service as well as annual reports. The new state franchising authority does not affect existing local franchise agreements awarded before January 1, 2007, except that (1) the gross revenue used to calculate the local franchise tax will no longer include the gross receipts subject to sales tax after that date and (2) the cable service provider can choose to terminate a local franchise agreement if the holder of a state-issued franchise begins to serve the same households in the franchise area. The act establishes the procedure for terminating a local franchise agreement. The act states that the award of a state franchise does not affect a determination of whether or not the service provided is a federally regulated cable service.

New Article 42 (1) requires cable service providers to provide free basic service to local public buildings, (2) prohibits discrimination based on income or race in the provision of cable television service, and (3) requires franchisees to comply with customer service standards and emergency alert requirements of Federal Communications Commission.

PEG channels. Up to \$2 million of the funds distributed to counties and cities under new GS 105-164.44I will be used to support PEG channels and sets. New GS 66-357 also sets the number, service tier placement, and transmission quality of PEG channels, sets programming requirements, and provides a mechanism for local governments to acquire additional PEG channels.

Study. The act directs the Revenue Laws Study Committee to study the effects of new Article 42 on competition in video programming services, the number of cable service subscribers, the price of cable service by service tier, the technology used to deliver the service,

and the deployment of broadband in NC and to report its findings and any recommendations to the 2009 General Assembly

Intro. by Carney, Luebke, McComas, Wainwright.

GS 66, 105, 153A, 160A, STUDY

June 13, 2006

H 2047. VIDEO SERVICE COMPETITION ACT. Filed 5/17/06. House committee substitute for the 1st edition will be summarized in tomorrow's *Daily Bulletin*.

June 14, 2006

H 2047. VIDEO SERVICE COMPETITION ACT. Filed 5/17/06. House committee substitute adopted 6/13/06 makes the following changes to 1st edition. Substantively identical to 2nd edition of S 1559, adopted 6/13/06, except: (1) Defines "video programming" in GS 66-350. (2) Modifies GS 66-354(b) to clarify that a provider is subject to forfeiture of revenue received during the period of noncompliance from subscribers to the cable service in the area of noncompliance. Also provides that forfeiture does not apply to revenue received from cable service provided over a cable system in an area that is adjacent to a service area described in a notice of franchise and notice of service filed by that cable service provider under GS 66-352 if the provider obtains a State-issued franchise and files a notice of service that includes this area within 20 days after a civil action for forfeiture is filed. (3) Deletes a redundant statutory reference in GS 66-355(2)c. and states that the termination of an existing local franchise agreement filed on the basis of wireline competition will proceed after the expiration of the 60-day review period unless the county or city has obtained an order enjoining the termination (2nd edition of S 1559 provides that the termination will proceed at the end of the review period unless the county or city brings a civil action to stay the termination). (4) Revises GS 66-358(a)(1), which provides for interconnection with another cable system upon written request, to require that the existing cable provider interconnect its cable system within 180 days after it receives a written request for interconnection. (5) Makes stylistic change to GS 160A-296(a)(6), to Section 19 (Section 18 in 2nd edition of S 1559), and to Section 21 (Section 20 in 2nd edition of S 1559). (6) Requires that the Consumer Protection Division of the Attorney General's Office report to the Revenue Laws Study Committee on or before April 1 of each year, beginning April 1, 2008, on cable service complaints received under GS 66-356.

June 22, 2006

H 2047. VIDEO SERVICE COMPETITION ACT. Filed 05/17/06. House amendment makes the following changes to 2nd edition. (1) Adds new subsection (g) to proposed new GS 66-357 providing that any county or city that does not receive PEG channel capacity as required under the statute may bring an action to compel a cable service provider to comply with the statute. (2) Amends proposed new GS 105-164.44l(e) by adding a requirement that any county or city that used part of its franchise tax revenue in fiscal year 2005-06 for operation and support of PEG channels or publicly owned and operated television stations must use the funds distributed to it under the statute to continue the same level of support for those public channels and stations.

July 5, 2006

H 2047. VIDEO SERVICE COMPETITION ACT. Filed 5/17/06. Senate committee substitute makes the following changes to 3rd edition. (1) Revises GS 66-355(a)(2) (listing grounds for termination of local franchise agreements) to provide that the subsection applies to agreements in effect on January 1, 2007. Clarifies that in order to terminate an agreement due to the existence of other cable service agreements in a county or city, the other agreement must be in substantially the same franchise area. (2) Adds new GS 66-355(a)(3) to clarify that a provider whose agreement expired before January 1, 2007, may obtain a State-issued franchise. (3) Deletes specific contact information for NC Attorney General's Office in GS 66-356(c) and instead provides that the appropriate contact information will be inserted later. Makes stylistic changes to GS 66-357(a) and (c). (4) Reorganizes new GS 66-357(b) and adds new GS 66-357(b)(2) to

require that a provider provide PEG channel capacity within the later of 120 days of receipt of the request or 30 days after receiving an interconnection request (was, within 120 days of request's receipt). (5) Revises GS 66-358(a)(1) to require that a provider that receives a request to interconnect its service with another provider must do so within 120 days (was, no deadline established) after its receipt of that request. (6) Modifies proposed GS 105-164.44I(c) to require that a county or city that imposed a franchise tax certify the amount of revenue that is derived from the tax by March 15, 2007 (was, January 15, 2007). (7) Amends GS 160A-296(a)(6) to provide that to the extent a municipality is authorized under applicable law to impose a fee or charge with respect to activities conducted in its rights-of-way, the fee or charge must apply uniformly and on a competitively neutral and nondiscriminatory basis to all comparable activities by similarly situated users of the rights-of-way.

July 21, 2006

SL 2006-151 (H 2047). VIDEO SERVICE COMPETITION ACT. AN ACT TO PROMOTE CONSUMER CHOICE IN VIDEO SERVICE PROVIDERS AND TO ESTABLISH UNIFORM TAXES FOR VIDEO PROGRAMMING SERVICES. Summarized in *Daily Bulletin* 5/17/06, 6/14/06, 6/22/06, and 7/5/06. Enacted July 20, 2006. Effective January 1, 2007.