

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 2047*
Committee Substitute Favorable 6/13/06

Short Title: Video Service Competition Act.

(Public)

Sponsors:

Referred to:

May 18, 2006

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

5 The General Assembly of North Carolina enacts:

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

8 "Article 42.

9 "State Franchise for Cable Television Service.

10 "§ 66-350. Definitions.

11 The following definitions apply in this Article:

- 12 (1) Cable service. – Defined in G.S. 105-164.3.
13 (2) Cable system. – Defined in 47 U.S.C. § 522.
14 (3) Channel. – A portion of the electromagnetic frequency spectrum that is
15 used in a cable system and is capable of delivering a television
16 channel.
17 (4) Existing agreement. – A local franchise agreement that was awarded
18 under G.S. 153A-137 or G.S. 160A-319 and meets either of the
19 following:
20 a. Is in effect on January 1, 2007.
21 b. Expired before January 1, 2007, and the cable service provider
22 under the agreement provides cable service to subscribers in the
23 franchise area on January 1, 2007.
24 (5) Pass a household. – Make service available to a household, regardless
25 of whether the household subscribes to the service.
26 (6) PEG channel. – A public, educational, or governmental access channel
27 provided to a county or city.
28 (7) Secretary. – The Secretary of State.
29 (8) Video programming. – Defined in G.S. 105-164.3.

1 **"§ 66-351. State franchising authority.**

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

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

13 **"§ 66-352. Award of franchise and commencement of service.**

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

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

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

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

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

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

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

1 requirements in subsection (b) of this section apply to the proposed area. If the map of
2 the area to be served includes any area that is part of the service area of another
3 State-issued franchise, the termination of a notice of franchise for the proposed area for
4 failure to begin service within the required time does not affect the status of the other
5 State-issued franchise.

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

9 **"§ 66-353. Annual service report.**

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

- 14 (1) The effective date of a notice of franchise for that area.
- 15 (2) A description and map of the service area.
- 16 (3) The approximate number of households in the service area.
- 17 (4) A description and a map of the households passed in the service area
18 as of July 1.
- 19 (5) The percentage of households passed in the service area as of July 1.
- 20 (6) The percentage of households passed in the service area as of July 1 of
21 any preceding year for which a report was required under this section.
- 22 (7) A report indicating the extent to which the holder has met the customer
23 service requirements under G.S. 66-356(b).
- 24 (8) A schedule indicating when service is expected to be offered in the
25 service area, to the extent the schedule differs from one included in the
26 notice of franchise or in a report previously submitted under this
27 section, and an explanation of the reason for the new schedule.

28 **"§ 66-354. General filing and report requirements.**

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

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

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

1 (b) Forfeiture. – A person who offers cable service over a cable system without
2 filing a notice of franchise or a notice of service as required by this Article is subject to
3 forfeiture of the revenue received during the period of noncompliance from subscribers
4 to the cable service in the area of noncompliance. Forfeiture does not apply to revenue
5 received from cable service provided over a cable system in an area that is adjacent to a
6 service area described in a notice of franchise and notice of service filed by that cable
7 service provider under G.S. 66-352 if the provider obtains a State-issued franchise and
8 files a notice of service that includes this area within 20 days after a civil action for
9 forfeiture is filed. A forfeiture does not affect the liability of the cable service provider
10 for sales tax due under G.S. 105-164.4 on cable service.

11 A cable service provider whose area includes the area in which a person is providing
12 cable service without complying with the notice of franchise and notice of service
13 requirements may bring a civil action for forfeiture. The amount required to be forfeited
14 in the action must be remitted to the Civil Penalty and Forfeiture Fund established in
15 G.S. 115C-457.2.

16 **"§ 66-355. Effect on existing local franchise agreement.**

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

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

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

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

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

38 c. A person provides wireline competition in the franchise area of
39 the existing agreement by offering video programming over
40 wireline facilities to single family households by a method that
41 does not require a franchise under this Article. A notice of
42 termination filed on the basis of wireline competition must
43 include evidence of the competition in providing video
44 programming service, such as an advertisement announcing the

1 availability of the service, the acceptance of an order for the
2 service, and information on the provider's Web site about the
3 availability of the service. A county or city is allowed 60 days
4 to review the evidence. The effective date of the termination is
5 tolled during this review period. At the end of this period, the
6 termination proceeds unless the county or city has obtained an
7 order enjoining the termination based on the cable service
8 provider's failure to establish the existence of wireline
9 competition in its franchise area.

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

19 **"§ 66-356. Service standards and requirements.**

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

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

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

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

41 (c) Complaints. – The Consumer Protection Division of the Attorney General's
42 Office is designated as the State agency to receive and respond to customer complaints
43 concerning cable services. Persistent or repeated violations of the federal customer
44 service requirements or the terms and conditions of the cable service provider's

1 agreement with customers are considered unfair or deceptive acts or practices under
2 G.S. 75-1.1.

3 To facilitate the resolution of customer complaints, the cable service provider must
4 include the following statement on the customer's bill: "If you have a complaint about
5 your cable service, you should first contact customer service at the following telephone
6 number: (insert the cable service provider's customer service telephone number). If the
7 cable service provider does not satisfactorily resolve your complaint, contact the
8 Consumer Protection Division of the Attorney General's Office of the State of North
9 Carolina at 9001 Mail Service Center, Raleigh, NC 27699-9001, at www.ncdoj.com, or
10 at 1-877-5-NO-SCAM.

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

13 **"§ 66-357. Availability and use of PEG channels.**

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

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

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

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

42 The cable service provider must maintain the same channel designation for a PEG
43 channel unless the service area of the State-issued franchise includes PEG channels that
44 are operated by different counties or cities and those PEG channels have the same

1 channel designation. Each county and city whose PEG channels are served by the same
2 cable system headend must cooperate with each other and with the cable system
3 provider in sharing the capacity needed to provide the PEG channels.

4 (d) Additional PEG Channels. – A county or city that does not have seven PEG
5 channels, including the initial PEG channels, is eligible for an additional PEG channel if
6 it meets the programming requirements in this subsection. A county or city that has
7 seven PEG channels is not eligible for an additional channel.

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

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

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

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

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

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

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

37 All programming on a PEG channel must be noncommercial. A cable service
38 provider may not brand content on a PEG channel with its logo, name, or other
39 identifying marks. A cable service provider is not required to transmit content on a PEG
40 channel that is branded with the logo, name, or other identifying marks of another cable
41 service provider.

42 **"§ 66-358. Transmission of PEG channels.**

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

4 (1) Interconnection with another cable system operated in its service area.
5 A cable service provider operating in the same service area as a
6 provider under a State-issued franchise must interconnect its cable
7 system on reasonable and competitively neutral terms with the other
8 provider's cable system within 180 days after it receives a written
9 request for interconnection and may not refuse to interconnect on these
10 terms. The terms include compensation for costs incurred in
11 interconnecting. Interconnection may be accomplished by direct cable,
12 microwave link, satellite, or another method of connection.

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

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

21 (1) Alter the transmission signal to make it compatible with the
22 technology or protocol the cable service provider uses to deliver its
23 cable service.

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

27 **"§ 66-359. PEG channel grants.**

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

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

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

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

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

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

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

44 **"§ 66-360. Service to public building.**

1 At the written request of a county or city, a cable service provider operating under a
2 State-issued franchise must provide cable service without charge to a public building
3 located within 125 feet of the provider's cable system. The required service is the basic,
4 or lowest-priced, service the provider offers to customers. The terms and conditions that
5 apply to service provided to a residential retail customer apply to the service provided to
6 the public building. Only one service outlet is required for a building. The cable service
7 provider is not required to provide inside wiring and is not required to provide service
8 that conflicts with restrictions that apply in a program licensing agreement or another
9 contract. A public building is a building used as a public school, a charter school, a
10 county or city library, or a function of the county or city."

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

13 "**§ 105-164.3. Definitions.**

14 The following definitions apply in this Article:

15 ...

16 (50c) Video programming. – Programming provided by, or generally
17 considered comparable to programming provided by, a television
18 broadcast station, regardless of the method of delivery."

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

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

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

27 b. ~~Cable service."~~

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

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

32 "**§ 105-164.4D. Bundled services.**

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

36 (1) If the service provider offers all the services in the bundle on an
37 unbundled basis, tax is due on the unbundled price of the taxable
38 service, less the discount resulting from the bundling. The discount for
39 a service as the result of bundling is the proportionate price decrease of
40 the service, determined on the basis of the total unbundled price of all
41 the services in the bundle compared to the bundled price of the
42 services.

43 (2) If the service provider does not offer one or more of the services in the
44 bundle on an unbundled basis, tax is due on the taxable service based

1 on a reasonable allocation of revenue to that service. If the service
2 provider maintains an account for revenue from a taxable service, the
3 service provider's allocation of revenue to that service for the purpose
4 of determining the tax due on the service must reflect its accounting
5 allocation of revenue to that service."

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

7 "**§ 105-164.12B. Bundled transactions. Tangible personal property bundled with**
8 **service contract.**"

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

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

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

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

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

30 "**§ 105-164.44I. Distribution of part of sales tax on video programming service and**
31 **telecommunications service to counties and cities.**

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

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

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

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

3 (b) Supplemental PEG Support. – The Secretary must include the applicable
4 amount of supplemental PEG channel support in each quarterly distribution to a county
5 or city. The amount to include is one-fourth of twenty-five thousand dollars (\$25,000)
6 for each qualifying PEG channel operated by the county or city. The amount of money
7 distributed under this subsection may not exceed two million dollars (\$2,000,000) in a
8 fiscal year. If the amount to be distributed for qualifying PEG channels in a fiscal year
9 would otherwise exceed this maximum amount, the Secretary must proportionately
10 reduce the applicable amount distributable for each PEG channel. If the amount to be
11 distributed for qualifying PEG channels in a fiscal year is less than two million dollars
12 (\$2,000,000), the Secretary must credit the excess amount to the PEG Channel Fund,
13 established in G.S. 66-359.

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

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

24 (c) 2006-2007 Fiscal Year Distribution. – The share of a county or city is its
25 proportionate share of the amount to be distributed to all counties and cities under this
26 subsection. The proportionate share of a county or city is the base amount for the county
27 or city compared to the base amount for all other counties and cities. The base amount
28 of a county or city that did not impose a cable franchise tax under G.S. 153A-154 or
29 G.S. 160A-214 before July 1, 2006, is two dollars (\$2.00) times the most recent annual
30 population estimate for that county or city. The base amount of a county or city that
31 imposed a cable franchise tax under either G.S. 153A-154 or G.S. 160A-214 before July
32 1, 2006, is the amount of cable franchise tax and subscriber fee revenue the county or
33 city certifies to the Secretary that it imposed during the first six months of the
34 2006-2007 fiscal year. A county or city must make this certification by January 15,
35 2007. The certification must specify the amount of revenue that is derived from the
36 cable franchise tax and the amount that is derived from the subscriber fee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **"§ 160A-211. Privilege license taxes.**

2 (a) Authority. – Except as otherwise provided by law, a city shall have power to
3 levy privilege license taxes on all trades, occupations, professions, businesses, and
4 franchises carried on within the city. A city may levy privilege license taxes on the
5 businesses that were formerly taxed by the State under the following sections of Article
6 2 of Chapter 105 of the General Statutes only to the extent the sections authorized cities
7 to tax the businesses before the sections were repealed:

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

43 (b) Barbershop and Salon Restriction. – A privilege license tax levied by a city
44 on a barbershop or a beauty salon may not exceed two dollars and fifty cents (\$2.50) for

1 each barber, manicurist, cosmetologist, beautician, or other operator employed in the
2 barbershop or beauty salon.

3 (c) ~~Piped Gas Restriction. Prohibition.~~ A city may not levy a ~~privilege license~~
4 ~~tax on a person who is engaged in the business of supplying piped natural gas and is~~
5 ~~subject to tax under Article 5E of Chapter 105 of the General Statutes.~~ impose a license,
6 franchise, or privilege tax on a person engaged in any of the businesses listed in this
7 subsection. These businesses are subject to a State tax for which the city receives a
8 share of the tax revenue.

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

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

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

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

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

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

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

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

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

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

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

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

35 (6) The power to regulate, license, and prohibit digging in the streets,
36 sidewalks, or alleys, or placing therein or thereon any pipes, poles,
37 wires, fixtures, or appliances of any kind either on, above, or below the
38 ~~surface;~~ surface. A fee or charge associated with the exercise of this
39 power must apply uniformly to all comparable activities by similarly
40 situated users of the public right-of-way.

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

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

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

2 "(a) A city shall have authority to grant upon reasonable terms franchises for the
3 ~~operation within the city of a telephone system and~~ any of the enterprises listed in
4 ~~G.S. 160A-311 and for the operation of telephone systems. G.S. 160A-311, except a~~
5 ~~cable television system. A franchise granted by a city authorizes the operation of the~~
6 ~~franchised activity within the city.~~ No franchise shall be granted for a period of more
7 than 60 years, except that a franchise for solid waste collection or disposal systems and
8 facilities shall not be granted for a period of more than 30 years ~~and cable television~~
9 ~~franchises shall not be granted for a period of more than 20 years.~~ Except as otherwise
10 provided by law, when a city operates an enterprise, or upon granting a franchise, a city
11 may by ordinance make it unlawful to operate an enterprise without a franchise."

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

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

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

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

34 **SECTION 18.** The Consumer Protection Division of the Attorney General's
35 Office must report to the Revenue Laws Study Committee on or before April 1 of each
36 year, beginning April 1, 2008, on the following information concerning cable service
37 complaints the Division has received from cable customers under G.S. 66-356:

- 38 (1) The number of customer complaints.
- 39 (2) The types of customer complaints.
- 40 (3) The different means of resolving customer complaints.

41 **SECTION 19.** The Secretary of State has no authority to determine whether
42 a person who is providing video programming is providing cable service over a cable
43 system. An award of a State-issued franchise under Article 42 of Chapter 66 of the
44 General Statutes, as enacted by this act, does not affect a determination of whether

1 video programming provided by the holder of the franchise is considered cable service
2 provided over a cable system under federal law or under a state law that applies
3 substantially the same definitions of "cable service" and "cable system" as federal law.
4 A person who provides video programming may obtain a State-issued franchise under
5 Article 42 of Chapter 66 of the General Statutes, as enacted by this act, and thereby
6 become subject to that Article, regardless of whether the video programming the person
7 provides is considered cable service provided under a cable system under that Article or
8 under federal law.

9 **SECTION 20.** If any provision of this act or its application is held invalid,
10 the invalidity does not affect other provisions or applications of this act that can be
11 given effect without the invalid provisions or application, and to this end the provisions
12 of this act are severable.

13 **SECTION 21.** The Revenue Laws Study Committee must review the effect
14 Article 42 of Chapter 66 of the General Statutes, as enacted by this act, has on the issues
15 listed in this section to determine if any changes to the law are needed:

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

20 The Committee must review the impact of this Article on these issues every two years
21 and report its findings to the North Carolina General Assembly. The Committee must
22 make its first report to the 2008 Session of the North Carolina General Assembly

23 **SECTION 22.** This act becomes effective January 1, 2007. Sections 7 and 8
24 of this act apply to the distribution made within 75 days after March 31, 2007, for the
25 quarter starting January 1, 2007.