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A Comparison of the Cable Franchising Provisions in House-Passed H.R. 5252 and in H.R. 5252 as Amended by the Senate Commerce Committee, 109th Congress

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A Comparison of the Cable Franchising Provisions in House-Passed H.R. 5252 and in H.R. 5252 as Amended by the Senate Commerce Committee, 109th Congress

Summary

H.R. 5252, the Communications Opportunity, Promotion, and Enhancement (COPE) Act of 2006, was passed by the House, and subsequently was amended in the nature of a substitute by the Senate Commerce Committee. Both versions of H.R. 5252 include provisions that seek to foster competitive entry into the cable television market by streamlining the process by which new entrants obtain a franchise to offer service. Both would expand the authority of the Federal Communications Commission (FCC) to set and enforce streamlined requirements, though the Senate version would allow local franchise authorities to retain greater authority.

Under the House version, an applicant would apply to the FCC for a national franchise, identifying the local areas it intended to serve. In contrast, under the Senate version, which was originally introduced as S. 2868 and which renames the legislation the Advanced Telecommunications and Opportunities Reform Act, an applicant would apply directly to the local franchise authority for a franchise, though the application form, itself, as well as most of the requirements, would be crafted by the FCC. In each case, when certain conditions have been met, incumbent cable service providers also would be eligible to use the new, simplified franchise procedures and requirements.

Under each version, the FCC is instructed to issue a number of national rules and is given certain enforcement and appeals responsibilities, but local franchise authorities retain authority over management of rights-of-way. Each version would eliminate a number of the requirements currently imposed on cable operators in Title VI of the Communications Act. But there also are many significant differences in these bills. Both versions include provisions relating to:

- the eligibility of new entrants and of existing cable providers for the streamlined franchising procedures;
- certification, application, and notification requirements;
- the identification of the geographic areas covered by the franchise;
- renewal and revocation procedures;
- franchise fees;
- public, educational, and governmental (PEG) channels;
- institutional networks;
- financial support for PEG channels and institutional networks;
- rights-of-way authority and management;
- national consumer protection and customer service standards;
- procedures for consumer protection and customer service complaints and appeals; and
- redlining prohibitions.

However, each version has different requirements in each of these areas.

This report will be updated as warranted.

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A Comparison of the Cable Franchising Provisions in House-Passed H.R. 5252 and in H.R. 5252 as Amended by the Senate Commerce Committee, 109th Congress

Overview

On June 8, 2006, H.R. 5252, the Communications Opportunity, Promotion, and Enhancement (COPE) Act of 2006, was passed by the House. Subsequently, that legislation was amended in the nature of a substitute by the Senate Commerce Committee; that amended version was released on August 4, 2006. Both versions of H.R. 5252 include provisions that seek to foster competitive entry into the cable television market by streamlining the process by which new entrants obtain a franchise to offer service. Both would amend the Communications Act¹ in important ways. Both would expand the authority of the Federal Communications Commission (FCC or Commission) to set and enforce streamlined requirements, though the Senate version would allow local franchise authorities to retain greater authority.

Under the House version, an applicant would apply to the FCC for a national franchise, identifying the local areas it intended to serve.² In contrast, under the Senate version, which was originally introduced as S. 2686 and which renames the legislation the Advanced Telecommunications and Opportunities Reform Act, an applicant would apply directly to the local franchise authority for a franchise, though the application form, itself, as well as most of the requirements, would be crafted by the FCC.³ In each case, when certain conditions have been met, the incumbent cable service providers also would be eligible to use the new, simplified franchise procedures and requirements.

¹ 47 U.S.C. 541 et seq.

² Other provisions in the COPE Act address enforcement of the principles incorporated in the FCC's broadband policy statement, the obligations and rights of providers of voice over internet protocol (VoIP) service, municipal provision of broadband services, mandatory provision of stand-alone broadband access service, and the development of seamless mobility.

³ Other provisions in the Advanced Telecommunications and Opportunities Reform Act address call home and interoperability requirements related to the war on terrorism, universal service reform and interconnection, municipal provision of broadband services, wireless innovation networks, digital television, child pornography, the internet consumer bill of rights, low power FM radio, cellphone tax moratorium, truth in caller ID, rural wireless and broadband service, and a number of miscellaneous issues.

Under each version, the FCC is instructed to issue a number of national rules and is given certain enforcement and appeals responsibilities, but local franchise authorities retain authority over management of rights-of-way. Each version would eliminate a number of the requirements currently imposed on cable operators in Title VI of the Communications Act.⁴ Both versions include provisions relating to:

- the eligibility of new entrants and of existing cable providers for the streamlined franchising procedures;
- certification, application, and notification requirements;
- the identification of the geographic areas covered by the franchise;
- renewal and revocation procedures;
- franchise fees;
- public, educational, and governmental (PEG) channels;
- institutional networks;
- financial support for PEG channels and institutional networks;
- rights-of-way authority and management;
- national consumer protection and customer service standards;
- procedures for consumer protection and customer service complaints and appeals; and
- redlining prohibitions.

However, each version has different requirements in each of these areas. Most of these differences have to do with the degree of state and local vs. federal authority, with the Senate version leaving more authority in the hands of state and local jurisdictions. For example, in both versions, consumer protection and customer service regulations would be promulgated by the FCC, and appeals of any local franchising authority orders in this area would be made to the FCC. But in the Senate version, those regulations would be enforced by the local franchising authority, which may refer a matter for enforcement to the state attorney general or state consumer protection agency on a case-by-case basis. In contrast, in the House version, a person may file a complaint either with the local franchising authority or with the FCC, and any local franchising authority order would be enforced by the FCC. Similarly, in the

⁴ For example, both versions would eliminate Sec.621(a)(4)(A), the so-called “build-out” provision, which states that “[i]n awarding a franchise, the franchising authority shall allow the applicant’s cable system a reasonable period of time to become capable of providing cable service to all households in the franchise area.” Without this provision, there are no build-out requirements for franchisees.

House version enforcement of the redlining (anti-discrimination) provision would be performed by the FCC, while in the Senate version such enforcement would be performed by the state attorney general.

Table 1 compares the major franchising provisions in the bills. It incorporates the differences in terminology in the two versions – for example, the House version continues to refer to “cable service” and “cable operators”, while the Senate version refers to “video service” and “video service providers”. **Table 1** also provides the section number that the provision would be assigned in an amended Communications Act.

Table 1: Side-by-Side Comparison of Major Cable Franchising Provisions in House-Passed H.R. 5252 and in H.R. 5252 as Amended by the Senate Commerce Committee, 109th Congress

Provision	House-Passed H.R. 5252	H.R. 5252 as Amended by the Senate Commerce Committee
Eligibility		
Election	An eligible applicant may elect to obtain a national franchise to provide cable service in a franchise area, or it may obtain a franchise from an existing state or local franchising authority. Sec. 630(a)(1) and (a)(4)(B).	
General Franchise Requirements	Sec. 617 of the Communications Act, relating to local franchising authority approval of the sale or transfer of a franchise, is repealed.	Sec. 617 of the Communications Act, relating to local franchising authority approval of the sale or transfer of a franchise, is repealed. A video service provider may not provide video service without a franchise. Sec. 621(a)(2). A franchising authority may not grant an exclusive franchise. Sec. 621(a)(1)(A).
Eligibility of new cable/video service providers	New cable providers may obtain a national franchise on the date of enactment of this law. Sec. 630(d).	The amendments to the Communications Act made by this version will take effect six months after its enactment into law. In the interim, the FCC shall initiate proceedings needed to implement the amendments and as soon as those requirements are in place new entrants may apply for a franchise under the new provisions. Sec. 381(a)(1) and (2).
Eligibility of existing cable/video service providers	Existing providers of cable service may obtain a national franchise for a franchise area if there is a competitive provider in that franchise area. Sec. 630(d).	Except as provided by a competition trigger, the new franchise provisions shall not apply to a cable operator with a franchise agreement in effect on the date of enactment. The old franchise provisions shall continue to apply until the earlier of the expiration date of the existing

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		<p>franchise agreement or the date on which a competition-triggered new franchise agreement that replaces the existing franchise agreement takes effect. Sec. 381(b)(1).</p> <p>Competition trigger: If a franchising authority authorizes a video service provider to provide video service in an area in which cable service is already being provided under an existing franchise agreement, when the new video provider commences video service in that area a cable operator with an existing franchise may submit an application for a franchise under the new franchise provisions. When the franchise is granted, (i) the terms and conditions of the new franchise agreement supersede the existing franchise agreement, and (ii) the new franchise provisions in the Communications Act shall apply. Sec. 381(b)(2).</p> <p>The old franchise provisions shall continue in effect after the date of enactment with respect to any cable operator to which they applied before that date until the earlier of (i) the expiration date of the franchise agreement under which the cable operator was operating on the date of enactment, and (ii) the date on which a new franchise agreement takes effect due to the competitive trigger provision. Sec. 381(c).</p>
Franchise Change If Cable Competition Ceases	If only one cable operator is providing cable service in a franchise area and that cable operator had obtained a national franchise when there had been more than one cable operator in that area, the local franchising authority may file a petition with the FCC requesting that the FCC terminate the national franchise for that franchise area. If the FCC finds there is only one cable provider in that franchise area, it shall issue an order granting the petition, which would take effect one year from the date of such grant if no other cable operator offers cable service in that	

Provision	House-Passed H.R. 5252	H.R. 5252 as Amended by the Senate Commerce Committee
	area during that one year. The cable operator that lost its national franchise may obtain a franchise from the local franchising authority. Sec. 630(b)(1)(G).	
Certification, Application, and Notice		
Certification/ Application/ Notification Process	<p>An applicant for a national franchise must file a certification with the FCC that provides contact information, identification of each franchise area in which the applicant seeks authority to offer cable service, and a declaration that it will comply with the rights-of-way requirements of the franchising authority in the locality for which it seeks a franchise and the consumer protection and customer service rules adopted by the FCC. Sec. 630(a)(2) and (3).</p> <p>On the day of filing a national certification for a franchise area, the applicant must transmit a copy of the certification to the local franchising authority for that area. Sec. 630(a)(4)(A).</p>	<p>An applicant for a video service franchise must file with the local franchising authority a standardized application form (to be created by the FCC). The filed application must include contact information for the applicant, the period for which the franchising agreement shall be in effect, the physical location of the headend (or its equivalent), and a description of the video service to be provided. It also must include a signed declaration that the applicant agrees to comply with all applicable federal and state statutes and regulations and all applicable municipal regulations and police powers regarding the use of rights-of-way, and geographically identifying the franchise area in which it intends to offer cable service. Sec. 603(a)(1) and (2) and 612(a)-(c).</p> <p>The application form also must include blank spaces, to be filled in by the franchising authority, for the franchise fee percentage; the number of public, educational, and governmental (PEG) access channels to be provided; the percentage fee to support PEG access facilities and institutional networks; and the franchising authority's point of contact. Sec. 603(a)(1).</p> <p>The franchising authority must publish public notice of receipt of a complete application within 15 days if public notice is required by state or local law. The franchising authority must complete the information it is required to add to the application form and return the form to the</p>

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Provision	House-Passed H.R. 5252	H.R. 5252 as Amended by the Senate Commerce Committee
		applicant within 90 days. A franchising agreement shall take place 15 calendar days after the date that the completed application is received by the applicant unless the applicant notifies the franchising authority within those 15 days that the terms offered are not accepted. Sec. 603(a)(3) and (4).
Application Deemed Approved/ Date of Effect and Duration	A national franchise shall be effective within 30 days of the date of the filing of a completed certification, for a term of 10 years. Sec. 630(b)(1) and (2)(A).	<p>If a franchising authority fails to act within the 90-day period on a franchise application that meets the requirements, the franchise application shall be deemed granted:</p> <p>effective on the 91st day;</p> <p>for a term of 15 years;</p> <p>with a franchise fee set at the same percentage of gross revenue as that paid by the cable operator with the most subscribers in the franchise area, or if there is no cable operator offering cable service in the franchise area, with a franchise fee of 5 percent of gross revenue;</p> <p>with an obligation to provide the number of PEG use channels required by Section 611 of the Communications Act. Sec. 603(b).</p> <p>A franchising authority may grant a franchise for a term of 5 to 15 years. Sec. 621(a).</p>
Identification of Each Franchise Area		
Identification of Each Franchise Area	The applicant must identify each franchise area in which it intends to offer cable service pursuant to the national certification. Because some of the national franchise requirements explicitly require the franchisee	The applicant must geographically identify in its application the franchise area in which it intends to offer cable service. Sec. 612(b)(3).

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	<p>to meet the franchise requirements currently imposed on cable companies with local franchises, the bill requires that applicants define their proposed franchise areas in a fashion that does not overlap the boundaries of existing cable franchises. Specifically —</p> <p>a franchise area must be the entirety of a franchise area in which an incumbent cable operator is authorized to provide cable service; or</p> <p>if the applicant seeks to serve a geographic area for which currently there is no authorized cable provider [currently, more than 95% of U.S. households are located in a geographic area that at least one cable company is franchised to serve], the franchise area must cover the entirety of the jurisdiction of a unit of general local government. If the applicant also seeks to serve a contiguous geographic area for which currently there is an authorized cable provider, the certification must specify separate franchise areas for the currently unserved and currently served areas; or</p> <p>if the applicant seeks to serve a geographic area that includes areas that are within the jurisdiction of different franchising authorities (e.g., contiguous counties), the certification must specify each such area as a separate franchise area. Sec. 630(a)(3)(F).</p>	
Renewal and Revocation		
Renewal and Revocation	A national franchise shall be renewed automatically upon expiration of the 10-year period. During the last year of the 10-year period, a local franchising authority may request a public hearing to identify cable-related community needs and interests and to assess the performance of	A video service provider may submit a written application for renewal of its franchise to a franchise authority not more than 180 days before the franchise expires. Any such application shall be made on the standard application form created by the FCC and shall be treated in the

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	<p>the cable operator that holds the national franchise (hereinafter referred to as the “national franchisee”) in that franchise area. A franchise may be revoked by the FCC for willful or repeated violation of any federal or state law or Commission regulation relating to the provision of cable service in the franchise area, for false statements or material omissions in FCC filings, for willful or repeated violation of rights-of-way management laws or regulations, or for willful or repeated violation of the anti-discrimination requirement. A national franchisee whose franchise has been revoked for a specific franchise area may seek reinstatement. Sec. 630(b)(2)(C) through (F).</p>	<p>same manner as any other franchise application. Sec. 625(a).</p> <p>A franchising authority make revoke a video service provider’s franchise if it determines, after notice and an opportunity for a hearing, that the video service provider has violated any federal or state law or FCC regulation relating to the provision of video services in the franchise area, made false statements or material omissions in any filing with the franchising authority or FCC, violated the rights-of-way management laws or regulations of any franchising authority in the franchise area, or violated the terms of the franchise agreement. Sec. 625(b)</p> <p>A franchising authority may not revoke a franchise unless it first provides written notice to the video service provider of the alleged violation on which the revocation would be based and a reasonable opportunity to cure the violation. Sec. 625(c).</p> <p>Any decision of a franchising authority to revoke a franchise is final for purposes of appeal. A video service provider whose franchise is revoked may avail itself of procedures in Sec. 635 for action in federal or state court. Sec. 625(d).</p>
Franchise Fees		
Franchise Fee	<p>A national franchisee shall pay to the franchising authority a franchise fee of up to 5% of gross revenues from the provision of cable service within the franchise area. Sec. 630(c)(1).</p>	<p>A franchising authority may impose and collect a franchise fee from a video service provider, but may not discriminate among video service providers in imposing or collecting any fee. Sec. 622(a).</p>

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		The franchise fee imposed for any 12-month period may not exceed 5% of the video service provider's gross revenue derived in that period. Sec. 622(b)(1).
Definition of Franchise Fee	<p>The term “franchise fee” includes any fee or assessment of any kind imposed by a franchising authority or other governmental entity imposed on a cable service provider or subscriber, solely because of their status as such. It does not include:</p> <p>any tax, fee or assessment of general applicability;</p> <p>any fees assessed for support of PEG use and institutional networks;</p> <p>requirements or charges for the management of public rights-of-way, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or</p> <p>any fee imposed under title 17, United States Code. Sec. 602(p)(2).</p>	<p>The term “franchise fee” includes any tax, fee or assessment of any kind imposed by a franchising authority or a state or local governmental entity imposed on a video service provider or subscriber, or both, solely because of their status as such. It does not include:</p> <p>any tax, fee or assessment of general applicability;</p> <p>any fees assessed for support of PEG use and institutional networks;</p> <p>requirements or charges incidental to the use of public rights-of-way, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages;</p> <p>any fee imposed under title 17, United States Code; or</p> <p>costs of fines, penalties, or recoupment. Sec. 622(g)(1).</p>
Definition of Gross Revenue(s)	<p>“Gross revenues” means all cash, credits, property, and in-kind contributions (services or goods) received by the cable operator for the provision of cable service within the franchise area. Gross revenues include —</p> <p>charges and fees paid by subscribers attributable to the provision of cable services, sold individually or as part of a package or bundle;</p> <p>compensation received for promotion or exhibition of any products or</p>	<p>“Gross revenue” means all cash, credits, property, and in-kind contributions (services or goods) received by a video service provider from the provision of video service within a franchise area. Gross revenue includes —</p> <p>charges and fees paid by subscribers for the provision of video service, sold individually or as part of a package or bundle;</p> <p>compensation received for promotion or exhibition of any product or service on the provider's video service;</p>

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	<p>services over the cable system;</p> <p>compensation for carriage of video programming or other programming service on that operator's cable service;</p> <p>compensation arrangements for advertising and advertising commissions paid to an affiliated third party for cable services advertising; and</p> <p>franchise fees imposed on the cable operator that are passed on to subscribers.</p>	<p>compensation received for carriage of video programming on the provider's system;</p> <p>compensation arrangements for advertising.</p>
	<p>Gross revenue does <i>not</i> include —</p> <p>revenues not actually received, even if billed, such as bad debt not recovered;</p> <p>refunds, rebates, credits, or discounts to subscribers or to a municipality, attributable to the cable service;</p> <p>revenues received by the cable operator or its affiliates from the provision of services or capabilities other than cable service, including telecommunications services, Internet access services, and non-cable services bundled with the cable service;</p> <p>revenues for the provision of directory or Internet advertising, including yellow pages, white pages, banner advertisement, and electronic</p>	<p>Gross revenue does <i>not</i> include:</p> <p>revenues not actually received, even if billed, such as bad debt not recovered;</p> <p>refunds, rebates, credits, or discounts to subscribers or to a municipality;</p> <p>revenues received by a video service provider or its affiliates from the provision of services or capabilities other than video service, including voice, Internet access, or other broadband-enabled applications that are not video service, and non-video services bundled with video services;</p> <p>revenues for the provision of directory or Internet advertising, including yellow pages, white pages, banner advertisement, and electronic publishing;</p>

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	<p>publishing;</p> <p>any tax, fee, or assessment of general applicability imposed on the customer or the transaction by a federal, state, or local government or any other governmental entity, collected by the provider, and required to be remitted to the taxing entity;</p> <p>sales of capital assets or surplus equipment;</p> <p>reimbursement by programmers of marketing costs actually incurred by the cable operator for the introduction of new programming; or</p> <p>the sale of cable services for resale to the extent the purchaser certifies in writing that it will resell the service and pay a franchise fee. Sec. 630(o).</p>	<p>any tax, fee, or assessment of general applicability imposed on a subscriber or transaction by federal, state, or local government, collected by the video service provider and required to be remitted to the taxing authority;</p> <p>sales of capital assets or surplus equipment;</p> <p>reimbursement by programmers for marketing costs incurred by the video service provider for the introduction of any new programming;</p> <p>the sale of cable services for resale to the extent that the purchaser certifies in writing that it will resell the service and pay any applicable franchise fee;</p> <p>revenues paid by subscribers to a home shopping programmer directly from the sale of merchandise through any home shopping channel (but excluding any commissions paid to the video service provider as compensation for promotion or exhibition of any product or service). Sec. 622(g)(2).</p>
PEG Channels and Institutional Networks		
Public, Educational, and Governmental (PEG) Channel Requirements	<p>A national franchisee shall provide channel capacity for PEG use that is not less than the channel capacity required of the cable operator with the most subscribers in the franchise area on the effective date of the national franchise.</p> <p>If there is no other cable operator in the franchise area required to provide channel capacity for PEG use, the national franchisee shall</p>	<p>A video service provider that obtains a franchise shall provide channel capacity for PEG use that is not less than the channel capacity required of the cable operator or video service provider with the greatest number of PEG use channels in the franchise area on the effective date of the franchise. If there is no other video service provider in the franchise area on the effective date of the franchise, the video service provider may be required to provide up to 3 channels. Sec. 611(a).</p>

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	<p>provide the channel capacity for such use determined by FCC rule.</p> <p>Every 10 years, a franchising authority may require a national franchisee to increase the channel capacity designated for PEG use by the higher of one channel or 10% of the PEG channel capacity required of that operator prior to the increase. Sec. 630(e)(1) and (3).</p>	<p>Every 15 years, a franchising authority may require a video service provider to increase the channel capacity designated for PEG use, and the channel capacity designated for such use on any institutional networks required, not to exceed the greater of 1 channel or 10% of the PEG channel capacity required of that provider prior to the increase. Sec. 611(b).</p>
Other Public, Educational, and Governmental (PEG) Channel Requirements	<p>PEG programming carried by the cable operator must be available to all subscribers in a franchise area. Sec. 630(e)(4)(A).</p> <p>The production of any PEG programming is the responsibility of the franchising authority. Sec. 630(e)(4)(B).</p> <p>The cable operator is responsible for the transmission from the signal origination point of the programming, or from the point of interconnection with another cable operator, to the cable operator's subscribers, of any PEG programming produced by or for the franchising authority and carried by the cable operator. Sec. 630(e)(4)(C).</p> <p>Unless 2 cable operators otherwise agree to the terms for interconnection and cost sharing, in a franchise area where there is more than one cable operator and at least one is a national franchisee, the cable operators must either agree to interconnection and cost sharing terms, or abide by FCC interconnection and cost-sharing regulations for the transmission of PEG programming without material deterioration in signal quality or functionality. Sec. 630(e)(4)(D).</p>	<p>PEG programming carried by the video service provider must be available to all subscribers in a franchise area. Sec. 611(d)(1).</p> <p>The production of any PEG programming is the responsibility of the franchising authority. Sec. 611(d)(2).</p> <p>The video service provider is responsible for the transmission from the signal origination point of the programming, or from the point of interconnection with another video service provider already offering the PEG programming, to the video service provider's subscribers, or any PEG programming produced by or for the franchising authority and carried by the video service provider. Sec. 611(d)(3).</p> <p>Unless 2 video service providers otherwise agree to the terms for interconnection and cost sharing, such video service providers shall comply with regulations prescribed by the Commission providing for the interconnection between the 2 video service providers for transmission of PEG programming without material degradation of signal quality or functionality and reasonable allocation of the costs of such interconnection. Sec. 611(d)(4).</p>

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	A cable operator shall display program information for PEG channels on any navigational device, guide, or menu containing other video programming that is made available to subscribers in the franchise area. Sec. 630(e)(4)(E).	<p>The video service provider shall display the program information for PEG programming in any print or electronic program guide in the same manner in which it displays program information for other video programming in the franchise area. Sec. 611(d)(5).</p> <p>A video service provider shall not exercise any editorial control over any PEG use of channel capacity, but a video service provider may refuse to transmit any public access program or portion of a public access program that contains obscenity. Sec. 611(c).</p>
Public, Educational, and Governmental (PEG) Channel and Institutional Network (I-Net) Financial Support	A national franchisee shall pay an amount equal to 1% of the cable operator's gross revenues in the franchise area to the franchising authority for the support of PEG use and institutional networks. Sec. 630(e)(2).	<p>A video service provider may be required to pay a fee equal to:</p> <p>not more than 1% of its gross revenue in the franchise area to the franchising authority for the support of PEG access facilities and institutional networks; or</p> <p>the value, on a per subscriber basis, of all monetary grants or in-kind services or facilities for PEG access facilities provided by the cable operator in the franchise area with the most cable service subscribers in the calendar year preceding the date of enactment of this act, pursuant to that cable operator's existing franchise in effect on the date of enactment. Sec. 622(b)(4).</p>
Existing Institutional Networks	A cable operator that provided cable service in a franchise area on the date of enactment of the act and then obtains a national franchise must continue to provide any institutional network that it was required to provide on the day before its national franchise became effective. Sec. 630(e)(2)	A franchising authority may require a cable operator or video service provider with a franchise in effect on the date of enactment of the act to continue to provide any institutional network it was required to provide on the date of enactment, notwithstanding the expiration or termination of that franchise pursuant to that cable operator or video service provider obtaining a franchise under the new rules in this act. Sec. 622(b)(4)(C)(i).

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	A franchising authority may not require a national franchisee to construct a new institutional network. Sec. 630(e)(2).	A franchising authority may not require a video service provider to construct a new institutional network. Sec. 622(b)(4)(C)(ii).
Audits Relating to Fees		
Reporting, Records, and Audits Relating to Fees	<p>A national franchisee shall make periodic reports to the FCC and the franchising authority to verify compliance with fee obligations. Sec. 630(m)(1).</p> <p>Upon request by a franchising authority or the FCC, a national franchisee shall make available its books and records for periodic audit. A franchising authority may review the business records of a cable operator, to the extent needed to ensure proper payment of fees, not more than once in a 12-month period. Sec. 630(m)(2) and (3).</p> <p>To the extent that a review identifies an underpayment of franchise fees or PEG/institutional network fees, the cable operator shall reimburse the franchising authority the reasonable costs of any such review conducted by an independent third party. The FCC shall determine by rule the minimum percentage underpayment that requires cost reimbursement. Sec. 630(m)(4).</p> <p>Any fee that is not reviewed by a franchising authority within three years after it is paid or remitted shall not be subject to later review by</p>	<p>A franchising authority may require a cable operator to provide information sufficient to calculate the per-subscriber equivalent fee to provide PEG and institutional network financial support. The information shall be treated as confidential and proprietary business information. Sec. 622(b)(4)(B).</p> <p>No more than once a year, a franchising authority may conduct an audit of a video service provider's business records to the extent reasonably necessary to ensure payment of the required fees. The video service provider shall make its books and records available for such periodic review. Sec. 622(e)(1) and (2).</p> <p>To the extent that the review identifies an underpayment of more than 5% of any fee, the video service provider shall reimburse the franchising authority the reasonable costs of any such review conducted by an independent third party with respect to such fee. The costs of any contingency fee arrangement between the franchising authority and the independent reviewer shall not be subject to reimbursement. Sec. 622(e)(3).</p> <p>Any fee that is not reviewed by a franchising authority within three years after it is paid or remitted shall not be subject to later review by the franchising authority. Sec. 622(e)(4).</p>

Provision	House-Passed H.R. 5252	H.R. 5252 as Amended by the Senate Commerce Committee
	the franchising authority. Sec. 630(m)(5).	All financial determinations and calculation shall be made in accordance with generally accepted accounting principles (GAAP). Sec. 622(f).
Fee Dispute Resolution	A franchising authority or a national franchisee may file a complaint at the FCC to resolve a dispute with respect to the amount of any fee required, if the franchising authority or the national franchisee provides the other entity written notice of such dispute and if they have not resolved the dispute within 90 calendar days after receipt of such notice. A complaint must be filed within three years of the period to which the disputed amount relates. The FCC shall issue an order resolving any complaint within 90 days of filing. Sec. 630(m)(6).	
Rights-of-Way		
Authority To Use Public Rights-of-Way	A national franchise authorizes the construction of a cable system over public rights-of-way and through easements within the area to be served by the cable system. Sec. 630(f)(1).	Any franchise shall be construed to authorize the construction of a video service system over public rights-of-way, and through easements, that have been dedicated for compatible purposes, within the area to be served by the video service system. Sec. 621(a)(3).
Restrictions on Franchisees' Use of Rights-of-Way	<p>A national franchisee can use local rights-of-way and easements subject to assurance that:</p> <p>the safety, functioning, and appearance of the property and the convenience and safety of other persons are not adversely affected by the installation or construction of facilities; Sec. 630(f)(1)(A)</p> <p>the cost of the installation, construction, operation, or removal of such facilities will be borne by the cable operator or subscriber, or a combination of both; Sec. 630(f)(1)(B) and</p>	<p>A franchisee can use local rights-of-way and easements subject to assurance that:</p> <p>the safety and functioning of the property and the safety of other persons are not adversely affected by the installation or construction of facilities; Sec. 621(a)(3)(A) and</p> <p>the cost of the installation, construction, operation, or removal of such facilities will be borne by the video service provider or subscriber, or a combination of both. Sec. 621(a)(3)(B).</p>

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	the owner of the property be justly compensated by the national franchisee for any damages caused by the installation, construction, operation, or removal of such facilities by the national franchisee. Sec. 630(f)(1)(C).	State or local government may require that a property owner be justly compensated by a video service provider for damage caused by the installation, construction, operation, or removal of facilities by the video service provider. Sec. 621(a)(2)(C).
Management of Public Rights-of-Way	A state or local government (including a franchising authority) retains its authority over a national franchisee to manage, on a reasonable, competitively neutral, and nondiscriminatory basis, the public rights-of-way and easements. A state or local government or franchising authority may impose charges for such management and may require compliance with such management and charges. Sec. 630(f)(2).	A state or local government shall apply its laws or regulations in a manner that is reasonable, competitively neutral, nondiscriminatory, and consistent with state police powers, including permitting, payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages to ensure compliance with such laws and regulations. Any permitting fees imposed by a state or local government shall be for the purposes of compensating that government for costs incurred in managing public rights-of-way. Any law that meets the requirements of this subparagraph shall not be held to have the effect of prohibiting a video service provider from offering video service. Sec. 621(a)(2)(B).
Rights-of-Way Dispute Resolution		If a dispute arises, the sole recourse of any party to the dispute shall be to file an action in a court of competent jurisdiction. Sec. 621(a)(1)(D).
Pole Attachments		Nothing in the act or the amendments made by this act will affect the application or interpretation of Sec. 224 of the Communications Act, which regulates pole attachments. Sec. 104.
Consumer Protection and Customer Service		
National Consumer Protection and Customer Service Standards	No state or local law or regulation shall impose on a national franchisee any consumer protection or customer service requirement other than consumer protection or customer service requirements of general applicability. Sec. 630(g)(1).	

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	<p>Within 120 days of enactment of this act, the FCC shall issue a report and order that updates for national franchisees the national consumer protection and customer service rules currently in section 632(b) of the Communication Act, taking into account the national nature of a franchise and the role of state and local governments in enforcing, but not creating, consumer protection and customer service standards. Sec. 630(g)(2).</p> <p>The national rules shall address, in addition to requirements in section 632(b), the following service issues: billing, billing disputes, discontinuation of service, when and how late fees may be assessed (but not the amount of such fees), loss of service or service quality, changes in channel lineups or other cable services and features, and the availability of parental control options. Sec. 630(g)(3)(A).</p> <p>The FCC's revised consumer protection rules shall provide for forfeiture penalties, customer rebates, refunds, or credits, and shall establish guidelines with respect to violations of such rules. These guidelines shall provide for increased forfeiture penalties for repeated violations of the standards in the rules and establish procedures for payments by the cable operator directly to the affected franchising authority. Sec. 630(g)(3)(B).</p>	<p>Within 120 days of enactment of this act, after receiving comment from interested parties, the FCC shall promulgate regulations, including penalties to be paid to subscribers, with respect to customer service and consumer protection requirements for video service providers. The regulations shall take effect 60 days after the date on which the final rule is promulgated by the Commission. Sec. 632(a)(1) and (2).</p>
Consumer Protection and Customer Service Complaints	<p>A person may file a consumer protection or customer service complaint with respect to an alleged violation of the FCC's revised consumer protection rules by a national franchisee either with the local franchising authority or with the FCC. Sec. 630(g)(4)(A).</p> <p>On its own motion or at the request of a person, a local franchising</p>	<p>The consumer protection and customer service regulations promulgated by the FCC shall be enforced by franchising authorities. A franchising authority may refer a matter for enforcement to the state attorney general or state consumer protection agency on a case-by-case basis. Sec. 632(c).</p>

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	<p>authority may initiate its own complaint proceeding with respect to an alleged violation or may file a complaint with the FCC regarding such an alleged violation. The local franchising authority or the FCC shall render a decision on any complaint filed within 90 days of its filing. Sec. 630(4)(B) and (C).</p> <p>In a proceeding commenced by a franchising authority, the franchising authority may issue an order requiring compliance with the FCC's consumer protection rules, but may not create any new standard or regulation or expand or modify the FCC's rules. In such a proceeding, the franchising authority may issue an order requiring the filing of any data, documents, or records that are directly related to the alleged violation. A franchising authority may charge a national franchisee a nominal fee to cover the costs of issuing orders. Sec. 630(g)(5)(A), (B), and (C).</p> <p>An order of a franchising authority shall be enforced by the FCC if the order is not appealed to the FCC, if the FCC does not agree to grant review, or if the order is sustained by the FCC on appeal. Sec. 630(g)(6)(A).</p> <p>Any party may file with the FCC a notice of appeal of an order of a franchising authority. Such appeal shall be deemed denied after 30-days unless the FCC agrees within such period to grant review of the appeal. If the appeal is not denied, the FCC shall render a decision within 90 days of such filing. Sec. 630(g)(6)(B) and (C).</p>	<p>A video service provider may appeal any enforcement action taken against that provider by a franchising authority to the FCC. Sec. 632(d).</p>

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Early Termination of Subscriptions		It is unlawful for a video service provider to charge a subscriber an amount in excess of one month's subscription fee as a penalty or service charge for terminating a subscription to the video service provider's service before the date on which the subscription term ends. Sec. 632(a)(2).
FCC Report on Consumer Protection and Customer Service Complaint Process	<p>Within one year of the enactment of this section, and annually thereafter, the FCC shall submit a report to the House and Senate Commerce Committees on the implementation of this complaint process, including the number of complaints filed with franchising authorities; any trends concerning complaints, such as increases in the number of particular types of complaints or in new types of complaints; the timeliness of the response of franchising authorities and the results of complaints not appealed to the FCC; the number of complaints filed directly with the FCC; the number of appeals filed with the FCC and the number of such appeals that the FCC agreed to hear; the timeliness of the FCC's responses to such complaints and appeals; and the results of such complaints and appeals filed with the FCC. Sec. 630(g)(7)(A).</p> <p>The FCC may request that franchising authorities submit information about the complaints filed with the franchising authorities, including the number of such complaints and the timeliness of the response and the results of such complaints. Sec. 630(g)(7)(B).</p>	
Redlining and Buildout		
Anti-discrimination (Redlining)	A national franchisee shall not deny cable service to any group of potential residential cable subscribers in the franchise area because of the income of that group. Sec. 630(h)(1).	A video service provider may not deny access to its video service to any group of potential residential video service subscribers because of the income, race, or religion of that group. Sec. 642(a).

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	<p>A franchising authority may file a complaint against a national franchisee with the FCC, after providing the franchisee with notice and the opportunity to respond. Sec. 630(h)(2)(A) and (B).</p> <p>Upon receipt of a complaint, the FCC shall give notice of the complaint to the national franchisee. In investigating a complaint, the FCC may require the national franchisee to disclose such information and documents as the FCC deems necessary to determine whether the national franchisee is in compliance, subject to confidentiality protections. The FCC shall issue a determination with respect to each violation alleged in the complaint within 60 days. Sec. 630(h)(2)(D), (E), and (F).</p> <p>If the FCC determines that a national franchisee has discriminated against a group on the basis of income, it shall ensure that the national franchisee extends access to that group within a reasonable period of time. Sec. 630(h)(2)(G).</p> <p>The maximum forfeiture penalty applicable to a violation of this subsection is \$750,000 for each day of the violation. Payment of any forfeiture payment shall be made directly to the franchising authority involved. Sec. 630(h)(2)(H).</p>	<p>This section may be enforced by the state attorney general through a complaint-initiated adjudication process under which a complaint may be filed by a resident of the franchising area who is aggrieved or by a franchising authority on behalf of residents of its franchise area. Within 180 days of receiving the complaint, a state attorney general shall act on such complaint either by filing a complaint with a court of competent jurisdiction or notifying the resident or franchising authority that the state attorney general will not file such a complaint. The totality of the video service provider's deployments in its service areas shall be considered in any adjudication pursuant to an enforcement action. Sec. 642(b)(1) and (2).</p> <p>If a court determines that a video service provider has violated subsection (a), it shall ensure that the video service provider remedies any violation and may assess a civil penalty in such amount as may be authorized under state law for the franchising area in which the violation occurred for violation of that state's anti-discrimination laws. Sec. 642(c).</p> <p>It is not a violation if video service is denied because technical feasibility, commercial feasibility, operational limitations, or physical barriers preclude the effective provision of video service. Sec. 642(d)(1).</p> <p>Nothing in this section authorizes the use of quotas, goals, or timetables as a remedy. Sec. 642(d)(2).</p>
Buildout Requirement	The buildout requirement currently in Sec. 621(a)(4)(A) is eliminated.	The buildout requirement currently in Sec. 621(a)(4)(A) is eliminated.
Buildout Report	A national franchisee must submit to the FCC and the franchising	Beginning three years after the date of enactment, each franchising

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	<p>authority, within 180 days of obtaining the franchise and then biannually, a report identifying the geographic areas in the franchise area where the cable operator offers cable service and describing the cable operator's progress in extending cable service to other areas in the franchise area. Sec. 630(h)(2)(C).</p>	<p>authority shall report to the FCC on video service provider deployment in its franchise area. The Commission shall develop and make available to franchising authorities a standardized, electronic data-based, report form to be used in complying with this section. A video service provider shall provide such information to the franchising authority as is needed to complete the report. Sec. 642(e)(1).</p> <p>Beginning four years after the date of enactment, and every four years thereafter, the FCC shall report to the Senate and House Commerce Committees on the buildout of video service. Sec. 642(e)(2).</p>
Miscellaneous Provisions		
State and Local Laws		<p>Nothing in this title is intended to affect state or local laws of general applicability, except to the extent that such laws are inconsistent with this title. Sec. 604.</p> <p>No state or local government may regulate direct broadcast satellite (DBS) services. This does not prevent state taxation of a DBS provider and does not preempt state or local laws of general applicability. Sec. 605.</p> <p>No state or local law may prohibit, or have the effect of prohibiting, a video service provider from offering video service. Sec. 621(a)(2)(A).</p> <p>Nothing in this section shall be construed to modify, impair, supersede, or authorize the modification, impairment, or supersession of, any state or local law pertaining to taxation. Sec. 622(d).</p>
Child Pornography	The FCC shall promulgate regulations to require a national franchisee to	

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	prevent the distribution of child pornography over its network. Sec. 630(i).	
Leased Access	The provisions of section 612(I) of the Communications Act regarding the carriage of programming from a qualified minority programming source or from any qualified educational programming source shall apply to a national franchisee. [Under current law, to promote diversity of program sources, a cable operator is required to set aside a certain percentage of its channel capacity for commercial use by persons unaffiliated with the operator. Section 612(i) allows the cable operator to use up to 33% of that set-aside channel capacity for the provision of programming from a qualified minority programming source or from a qualified educational programming source.] Sec. 630(j).	
Municipal Operators		A local or municipal authority may operate as a multichannel video programming distributor in the franchise area. Sec. 612(f).
IP-enabled Video Service		<p>IP-enabled video service is an interstate service and is subject only to federal regulations. Sec. 642(a).</p> <p>“IP-enabled video service” means a video service provided over the public Internet [undefined] utilizing Internet protocol, or any successor protocol that is not offered by, or not offered as part of a package of video services offered by, a video service provider or its affiliate. Sec. 642(b).</p> <p>The FCC may not impose any rule on, apply any regulation to, or otherwise regulate the offering or provision of IP-enabled video service. Sec. 642(c).</p>

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		Nothing in this section shall be construed to interfere with any lawful activity of law enforcement or to modify, impair, supersede, or authorize the modification, impairment, or supersession of, any state or local law. Sec. 642(d) and (e).
Emergency Alerts	A state or local government may access the emergency alert system of a national franchisee to transmit local or regional emergency alerts. Sec. 630(l).	
Access to Programming for Shared Facilities	A cable programming vendor in which a cable operator has an attributable interest shall not deny a national franchisee access to video programming solely because the national franchisee uses a headend for its cable system that is also used, under a shared ownership or leasing agreement, as the headend for another cable system. [This provision is intended to protect small cable operators that share facilities with other cable operators.] Sec. 630(n)	A video service programming vendor in which a video service provider has an attributable interest may not deny a video service provider with a franchise access to video programming solely because that video service provider uses a headend for its video service system that is also used, under a shared ownership or leasing agreement, as the headend for another video service provider. [This provision is intended to protect small cable operators that share facilities with other cable operators.] Sec. 628(a).
Preservation of Basic Tier Regulation		The basic tier regulation requirements in Sec. 623 of the current Title VI shall continue to apply in any franchise area until a franchising authority receives a notice that a competitive provider has commenced the provision of video service in the service area. Sec. 381(c)(2).
Report on Cable Service Deployment	<p>The FCC shall, commencing not later than one year after the date of enactment of the act, issue a report annually on the deployment of cable services pursuant to the amendments in this title. In its report, the FCC shall describe in detail the following:</p> <p>With respect to deployment by new cable operators — the progress of deployment of such service within the telephone service area of cable operators, if the operator is also an incumbent local</p>	

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	<p>exchange carrier, including a comparison with the progress of deployment of broadband services not defined as cable services within such telephone service areas; the number of franchise areas in which such service is being deployed and offered; where such service is not being deployed and offered; and the number and locations of franchise areas in which the cable operator is serving only a portion of the franchise area, and the extent of such service within the franchise area.</p> <p>The number and locations of franchise areas in which a cable operator with a franchise under section 621 of the Communications Act on the date of enactment of this act withdraws service from any portion of the franchise area for which it previously offered service, and the extent of such withdrawal of service within the franchise area.</p> <p>The rates generally charged for cable service.</p> <p>The rates charged by overlapping, competing multichannel video programming distributors and by competing cable operators for comparable service or cable service.</p> <p>The average household income of those franchise areas or portions of franchise areas where cable services are being offered, and the average household income of those franchise areas, or portions of franchise areas, where cable service is not being offered.</p> <p>The proportion of rural households to urban households, as defined by the Bureau of the Census, in those franchise areas or portions of franchise areas where cable service is being offered and where it is not being offered, including a state-by-state breakdown of such data and a</p>	

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	<p>comparison with the overall ratio of rural and urban households in each state; and</p> <p>A comparison of the services and rates in areas served by national franchisees and the services and rates in other areas.</p> <p>The FCC is authorized to require cable operators to report all of the information that the FCC needs to compile the report and to require cable operators to file the same information with the relevant franchising authorities and state commissions. Sec. 103.</p>	
Definitions		
Definition of Cable Operator/Video Service Provider	<p>The term “cable operator” means any person or group who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or who otherwise controls or is responsible for the management and operation of such a cable system. This includes a person or group with a national franchise. Sec. 602(5) as clarified by Sec. 630(p).</p>	<p>The term “video service provider” means a facilities-based provider of video service that utilized a public right-of-way in the provision of such service (including cable operators and providers offering open video systems under Sec. 653), regardless of the transmission technology used and regardless of how the subscriber interacts with the service, but does not include satellite service, video programming using radio communication directly to the recipient’s premises, or service via commercial mobile service. Sec. 314(25).</p> <p>The term “cable operator” includes a local exchange carrier that provides video services to video service subscribers in its telephone service area through an open video system that complies with the requirements of Sec. 653 of the Communications Act. Sec. 381(d)(1).</p>
Definition of Cable Service/Video Service	<p>The term “cable service” means —</p> <p>(i) the one-way transmission to subscribers of video programming, or</p>	<p>The term “video service” means –</p> <p>(i) the transmission to subscribers of video programming, interactive on-</p>

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	<p>other programming service; and</p> <p>(ii) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service; or</p> <p>the transmission to subscribers of video programming or other programming service provided through wireline facilities located at least in part in the public rights-of-way, without regard to delivery technology, including Internet protocol technology, except to the extent that such video programming or other programming service is provided as part of a commercial mobile service or an Internet access service.</p>	<p>demand service, or other programming service; and</p> <p>(ii) subscriber interaction, if any, required for the selection or use of such video programming, interactive on-demand service, or other programming service regardless of the transmission technology used and regardless of how the subscriber interacts with the service. Sec. 314(24).</p>