HOUSE DOCKET, NO. 1192 FILED ON: 1/20/2011

HOUSE . . . . . No. 3558

The Commonwealth of Massachusetts

PRESENTED BY:

John W. Scibak

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act promoting consumer choice and competition for cable service..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Joyce A. Spiliotis	*12th Essex*

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By Mr. Scibak of South Hadley, a petition (accompanied by bill, House, No. 3558) of Joyce A. Spiliotis for legislation to promote consumer choice and competition for cable service. Telecommunications, Utilities and Energy.

The Commonwealth of Massachusetts

An Act promoting consumer choice and competition for cable service..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Findings. Whereas Massachusetts' consumers benefit from expanded choice and competition for cable television services, and

Whereas, increased investment and the potential for competition in the cable service market through the provisioning of new communications services and deployment of advanced communications infrastructure, including fiber optic technologies, further enhances economic opportunities, smart growth, the delivery of health care services, improved public safety, education and human services and the overall health and well being of the residents of the Commonwealth, and

Whereas, modifying existing cable service franchising laws through the enactment of new standards and procedures that provide consumers with expedited access to a competitive facilities-based cable market is warranted in this state, The General Court finds that a local franchising process that speeds innovation, technology deployment, and competition while sustaining local programming via public, education and government channels through a predictable set of consumer-supported fees is in the public interest.

SECTION 2. Chapter 166A is hereby amended in section 1, as appearing in the 2006 Official Edition, by inserting the following definitions:

"Annual gross revenue", the revenue derived during a twelve-month period from the operation of the CATV system to provide cable service as defined by federal law at 47 U.S.C. section 542(b).

"Incumbent cable operator." The cable operator serving the largest number of cable subscribers in a particular municipal franchise area on the effective date of this chapter.

22 SECTION 3. Section 5 of said chapter 166A, as so appearing, is hereby amended by
23 inserting after by inserting after the words "shall agree to the following", in the first sentence, the
24 following words:- “unless otherwise authorized by an agreement with an issuing authority.”

25 SECTION 4. Said chapter 166A is hereby further amended by striking out section 6, as
26 so appearing, and inserting in place thereof the following section:-

27 Section 6. Issuance of License; Hearing; Notice.

28 (a) Within ten (10) business days of receipt of an application, the issuing authority and
29 applicant shall commence negotiations on the terms and conditions of a license.

30 (b) Within ninety (90) days of receipt of an application, the issuing authority shall hold a
31 public hearing thereon, first causing notice of the time and place of such hearing and of the
32 subject matter sufficient for identification, to be published in a newspaper of general circulation
33 in the city or town not less than fourteen days before the day of such hearing, or if there is no
34 such newspaper in such city or town then by posting such notice in a conspicuous place in the
35 city or town hall for a period of not less than fourteen days before the day of such hearing.

36 (c) The purpose of the hearing shall be to assess the applicant’s financial, technical and
37 other qualifications to operate a CATV system in the municipality based upon the contents of the
38 application and the negotiated terms and conditions of the license. Within five (5) business days
39 of the public hearing held pursuant to this section, the issuing authority shall approve or deny the
40 application, provided that the issuing authority may not unreasonably refuse to approve a
41 competitive cable license application. For purposes of this section and section thirteen (“Renewal
42 of License”), it shall be deemed unreasonable for an issuing authority to require the applicant to
43 provide fees in excess of those set forth in section nine of this chapter. In the event that the
44 issuing authority approves the application, then the parties shall execute a final license within
45 five (5) business days of the public hearing, and the issuing authority shall deliver a copy of the
46 fully-executed final license to the division. In the event that the issuing authority denies the
47 application, then it shall issue a written public statement within five (5) business days of the
48 public hearing containing the reasons for its rejection, and the issuing authority shall promptly
49 deliver a copy of said public statement to the applicant and to the division.

50 SECTION 5. Chapter 166A is hereby amended by striking out section 9, as so appearing,
51 and inserting in place thereof the following section:-

52 Section 9. License Fees; PEG Support Fees.

53 No application for a license to operate a CATV system or for renewal, transfer or
54 assignment of such a license shall be considered by an issuing authority unless it is accompanied
55 by an application fee of one hundred dollars payable to the city or town. A licensee, serving
56 more than two hundred and fifty subscribers, shall on or before March fifteenth of each year, pay

57 to the commonwealth a license fee equal to eighty cents per subscriber served and to the issuing
58 authority a license fee equal to fifty cents per subscriber served. In determining a license fee, the
59 number of subscribers served shall be measured as of December thirty first of the preceding
60 calendar year. The issuing authority may require each CATV operator issued a license to provide
61 funding to support the ongoing operations of public, educational and governmental ("PEG")
62 access programming at the same percentage assessed upon all other CATV operators serving the
63 municipality. Such PEG support fee, together with the license fees set forth in subsection (a)
64 shall not exceed five percent (5%) of the CATV operator's annual gross revenue. Each annual
65 fee payment set forth in subsections (b), (c) and (d) of this section shall be due and payable on or
66 before March fifteenth of each year for CATV operations undertaken during the preceding
67 calendar year. After the effective date of this chapter and until the expiration of the incumbent
68 CATV operator's existing license, if the incumbent CATV operator's license has obligations to
69 remit to the issuing authority any cash payments for the capital costs of public, educational, and
70 government access channel facilities or institutional networks in the municipality, each CATV
71 operator issued a license by the issuing authority may be required to provide payments to the
72 issuing authority on a pro rata share per annum basis to support the capital costs of public,
73 educational, and government access channel facilities or institutional networks in an amount up
74 to one percent (1%) of each operator's annual gross revenue, provided that in no event shall the
75 total of such payments exceed the capital support funding required to be provided in cash by the
76 incumbent CATV operator's license, pro rated on a monthly per subscriber basis calculated based
77 on the incumbent CATV operator's cash capital support obligation and on the number of
78 subscribers to the incumbent CATV operator's cable service in the municipality at the time the
79 CATV provider's license application is filed with the issuing authority. After expiration of the
80 incumbent CATV operator's license in effect as of the effective date of this chapter, all CATV
81 operators in a municipality, including an incumbent CATV operator who renews its license
82 pursuant to section thirteen of this chapter, shall provide annual cash payments to the issuing
83 authority to support the capital costs of public, educational, and government access channel
84 facilities or institutional networks in an amount up to one percent (1%) of each operator's annual
85 gross revenue, so long as the percentage assessed against the annual gross revenue is the same
86 for all CATV operators serving the municipality. The CATV operator's obligation to transmit
87 public, educational and governmental access channel signals shall be subject to the provision by
88 the issuing authority, without charge to the CATV operator of: (1) access to the content
89 origination facility; (2) access to any required equipment within the content origination facility
90 and suitable required space, environmental conditions, electrical power supply, access, and
91 pathways within the content origination facility; (3) video and audio signal feeds in an analog
92 baseband format (NTSC) or other format that is acceptable to the license holder; and (4) any
93 third-party consent that may be necessary to transmit such access channel signals (including,
94 without limitation, any consent that may be required with respect to third-party facilities,
95 including the facilities of other CATV operators in the municipality, used to originate at or
96 transmit PEG access channel content to the content origination facility) .

SECTION 6. Said chapter 166A, as so appearing, is hereby further amended by striking out the first paragraph of Section 14, and replacing it with the following new paragraph: Any applicant for a license or renewal of a license who is aggrieved by a denial of its application by the issuing authority or by its failure to act within the period of sixty days or otherwise act with the time periods set forth in Section 6 of this chapter or any licensee who is aggrieved by the action of an issuing authority in modifying, suspending, cancelling, revoking, declaring a license forfeited, denying consent to the transfer or assignment of a license or control thereof, or by the issuing authority's failure to act within the period of sixty days may appeal therefrom to the division within thirty days following notice of such action or within thirty days following the expiration of such sixty day period of inaction or such time period set forth in Section 6 of this chapter, by a petition in writing, setting forth all material facts in the case.

SECTION 7. Said chapter 166A is hereby further amended by striking out the first line of Section 16, as so appearing, and inserting in its place the following sentence: The division shall after hearing issue or amend such standards and regulations as are necessary and appropriate to carry out the purpose of this chapter for which purpose it may employ such expert assistants as it deems necessary.

SECTION 8. This act shall take effect immediately upon passage.