

HOUSE No. 3765

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

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:

1 SECTION 1. Findings.

2 Whereas Massachusetts’ consumers benefit from expanded choice and competition for
3 cable television services, and

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

10 Whereas, modifying existing cable service franchising laws through the enactment of
11 new standards and procedures that provide consumers with expedited access to a competitive
12 facilities-based cable market is warranted in this state,

13 The General Court finds that a local franchising process that speeds innovation,
14 technology deployment, and competition while sustaining local programming via public,
15 education and government channels through a predictable set of consumer-supported fees is in
16 the public interest.

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

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

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

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

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

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

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

33 such newspaper in such city or town then by posting such notice in a conspicuous place in the
34 city or town hall for a period of not less than fourteen days before the day of such hearing.

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

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

51 Section 9. License Fees; PEG Support Fees.

52 No application for a license to operate a CATV system or for renewal, transfer or
53 assignment of such a license shall be considered by an issuing authority unless it is accompanied
54 by an application fee of one hundred dollars payable to the city or town. A licensee, serving

55 more than two hundred and fifty subscribers, shall on or before March fifteenth of each year, pay
56 to the commonwealth a license fee equal to eighty cents per subscriber served and to the issuing
57 authority a license fee equal to fifty cents per subscriber served. In determining a license fee, the
58 number of subscribers served shall be measured as of December thirtyfirst of the preceding
59 calendar year.

60 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 access
62 programming. Such fee, together with the license fee set forth in subsection (a), shall not exceed
63 five percent (5%) of the CATV operator's annual gross revenue.

64 Unless otherwise authorized by an agreement with the issuing authority, after the
65 effective date of this chapter and until the expiration of the incumbent CATV operator's existing
66 license, if the incumbent CATV operator's license has obligations to remit to the issuing
67 authority any lump sum payments for the capital costs of public, educational, and government
68 access channel facilities or institutional networks, each CATV operator issued a license by the
69 issuing authority may be required to provide payments to the issuing authority to support the
70 capital costs of public, educational, and government access channel facilities or institutional
71 networks in an amount up to one percent (1%) of each operator's annual gross revenue, provided
72 that in no event shall the total of such payments exceed the capital support funding required to be
73 provided in the incumbent CATV operator's license, pro rated on a monthly per subscriber basis
74 calculated based on the incumbent CATV operator's capital support obligation in the existing
75 license and number of subscribers in the municipality at the time the competitive provider's
76 license application is filed with the issuing authority.

77 After expiration of the incumbent CATV operator’s license in effect as of the effective
78 date of this chapter, all CATV operators in a municipality shall provide annual payments to the
79 issuing authority to support the capital costs of public, educational, and government access
80 channel facilities or institutional networks in an amount equal to one percent (1%) of each
81 operator’s annual gross revenues, or such other lesser amount that may be authorized by an
82 agreement with the issuing authority. Each such annual payment shall be remitted to the issuing
83 authority on or before March 15th of each year.

84 The CATV operator’s obligation to transmit public, educational and governmental access
85 channel signals shall be subject to the provision by the issuing authority, without charge to the
86 CATV operator of: (1) access to the content origination facility; (2) access to any required
87 equipment within the content origination facility and suitable required space, environmental
88 conditions, electrical power supply, access, and pathways within the content origination facility;
89 (3) video and audio signal feeds in a mutually agreed upon format suitable for access channel
90 programming; and (4) any third-party consent that may be necessary to transmit such access
91 channel signals (including, without limitation, any consent that may be required with respect to
92 third-party facilities, including the facilities of the incumbent cable provider, used to originate at
93 or transmit access channel content to the content origination facility) .

94 SECTION 6. Said chapter 166A, as so appearing, is hereby further amended by striking
95 out the first paragraph of Section 14, and replacing it with the following new paragraph:

96 Any applicant for a license or renewal of a license who is aggrieved by a denial of its
97 application by the issuing authority or by its failure to act within the period of sixty days or
98 otherwise act with the time periods set forth in Section 6 of this chapter or any licensee who is

99 aggrieved by the action of an issuing authority in modifying, suspending, cancelling, revoking,
100 declaring a license forfeited, denying consent to the transfer or assignment of a license or control
101 thereof, or by the issuing authority's failure to act within the period of sixty days may appeal
102 therefrom to the division within thirty days following notice of such action or within thirty days
103 following the expiration of such sixty day period of inaction or such time period set forth in
104 Section 6 of this chapter, by a petition in writing, setting forth all material facts in the case.

105 SECTION 7. Said chapter 166A is hereby further amended by striking out the first line
106 of Section 16, as so appearing, and inserting in its place the following sentence:

107 The division shall after hearing issue or amend such standards and regulations as are
108 necessary and appropriate to carry out the purpose of this chapter for which purpose it may
109 employ such expert assistants as it deems necessary.

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