

**HOUSE . . . . . No. 3558**

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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 adoption of the accompanying bill:

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Joyce A. Spiliotis</i>	<i>12th Essex</i>	<i>1/27/2011</i>

**HOUSE . . . . . No. 3558**

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**

**In the Year Two Thousand Eleven**

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

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

9 Whereas, modifying existing cable service franchising laws through the enactment of  
10 new standards and procedures that provide consumers with expedited access to a competitive  
11 facilities-based cable market is warranted in this state, The General Court finds that a local  
12 franchising process that speeds innovation, technology deployment, and competition while

13 sustaining local programming via public, education and government channels through a  
14 predictable set of consumer-supported fees is in the public interest.

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

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

20 “Incumbent cable operator.” The cable operator serving the largest number of cable  
21 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) .

97 SECTION 6. Said chapter 166A, as so appearing, is hereby further amended by striking  
98 out the first paragraph of Section 14, and replacing it with the following new paragraph: Any  
99 applicant for a license or renewal of a license who is aggrieved by a denial of its application by  
100 the issuing authority or by its failure to act within the period of sixty days or otherwise act with  
101 the time periods set forth in Section 6 of this chapter or any licensee who is aggrieved by the

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

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

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