

# SENATE ECONOMIC GROWTH COMMITTEE

## STATEMENT TO

### SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 192**

# **STATE OF NEW JERSEY**

DATED: MARCH 13, 2006

The Senate Economic Growth Committee reports favorably a Senate Committee Substitute for Senate Bill No. 192.

The bill, as substituted, changes the State's "Cable Television Act," P.L.1972, c.186 (C.48:5A-1 et seq.) (the "act") to establish a bifurcated system as to how a cable television ("CATV") company may receive an approval for providing CATV service in this State. Under the bill, the CATV company may either: (1) obtain a municipal consent in the form of an ordinance before it obtains a certificate of approval from the Board of Public Utilities (the "BPU") to provide CATV service within a particular municipality (as currently allowed); or (2) receive a system-wide franchise by constructing or operating a CATV system at any location within the State in which the company, at the time of the issuance of the system-wide franchise, either has plant or equipment in use for the provision of any consumer video, cable or telecommunications service or has proposed to place such plant or equipment into use to provide such service.

The bill amends section 3 of the act to clarify and expand a number of definitions, such as including in the definition of a CATV system, the facilities of either a telephone common carrier or an electric public utility subject to BPU regulation, to the extent that such facilities are used for transmission of video programming directly to subscribers. The bill also amends section 3 of the act to add definitions such as "franchise," "system-wide franchise," "local franchising authority," "telecommunications service provider" "telecommunications service," "video programming" "other programming service" and "gross revenues," and to clarify the meaning of the terms "cable television service" and "cable television company," in order to conform those definitions to those found in federal law.

The bill amends section 2 of P.L.1985, c.356 (C.48:5A-11.2) to include eligible members of economically disadvantaged groups as persons who may receive a reduction or discount for CATV service.

The bill amends sections 9 through 11 of the act to clarify that actions taken by the BPU with respect to CATV service is to be consistent with federal law.

The bill amends section 15 of the act to provide that a telecommunications service provider holding authority, granted prior to the enactment of the bill, to utilize the public rights-of-way to construct, upgrade, operate or maintain a communications network shall not be required to obtain a certificate of authority, system-wide franchise or any other authorization, except for being subject to generally applicable non-discriminatory permit requirements, to construct, upgrade, operate or maintain a communications network capable of providing CATV service, and a certificate of authority or a system-wide franchise shall be required only prior to the actual provision of CATV service on a commercial basis to the general public.

The bill amends section 16 of the act to require an application for a system-wide franchise to be in written form and include the applicable information required under section 28 of the act. An application for a certificate of approval or a system-wide franchise is to be accompanied by a filing fee of \$1,000 (which is increased from the current fee of \$100). The bill further amends section 16 of the act to provide an expedited hearing procedure under which the board is to review the application for a system-wide franchise by requiring that, within 45 days of the receipt of such application, the board is to order the director to schedule two public hearings to be held in different geographical areas of the State during the 45-day review period to consider the application.

The bill amends section 17 and 18 of the act to authorize issuance of a system-wide franchise by the BPU if the applicant establishes to the BPU's satisfaction that all federal and State requirements have been met and increases certain application filing fees.

The bill amends section 19 of the act to provide that: (1) a system-wide franchise or certificate of approval is not transferable except by consent of the BPU; (2) the issuance of a system-wide franchise and its renewal is valid for seven years; and (3) the BPU is to establish rules governing the renewal of a system-wide franchise.

The bill amends section 20 of the act to clarify that the provisions of that section do not apply to a telecommunications service provider deploying telecommunications facilities that can be used as shared-use facilities to carry CATV service at a later date.

Section 19 of the bill provides that any municipal consent and certificate of approval issued prior to the effective date of the bill for existing CATV companies shall remain in effect until they expire or until the CATV company is granted a renewal of the municipal franchise or a system-wide franchise.

Section 20 of the bill requires that as part of any system-wide franchise issued by the BPU to CATV companies that on the date of the issuance of the system-wide franchise provide more than 40 percent of the local exchange telephone service market in this State, such companies are required to: (1) begin providing CATV service on

a commercial basis, within three years of issuance of the system-wide franchise, (a) in each county seat within the CATV company's service area and in which there is located a central office, as defined under federal regulation, of such CATV company, and each municipality served by such central office, and (b) in the municipalities in the CATV company's service area that have a population density greater than 7,111 per square mile of land area, as determined by the most recent federal decennial census; and (2) make CATV service available to residential customers in any such municipalities within six years of the date the company first provides CATV service on a commercial basis directly to multiple subscribers within such municipalities, subject to limited exceptions. Section 20 of the bill requires every CATV company receiving a system-wide franchise to provide CATV service without discrimination on the basis of the income levels of the residents of the municipality. Section 20 of the bill also allows any person affected by the requirements of a system-wide franchise to initiate proceedings with the BPU to determine whether there has been a denial of access and authorizes the BPU to impose appropriate penalties to direct the company to comply with the system-wide franchise requirements.

The bill amends section 28 of the act to require a commitment from a CATV company receiving a system-wide franchise to: (1) match or surpass any line extension policy operative at the time the system-wide franchise is granted and placed into effect prior to the enactment of the bill by a local franchise or certificate of approval, for the duration of the system-wide franchise; (2) provide each municipality that is served by a CATV company with two public, educational and governmental access channels, provided that if two or more access channels are requested by a municipality, the municipality shall demonstrate that its cable-related needs require the provision of such additional access channels; (3) retain or provide, without charge, one service outlet activated for basic service to any and all fire stations, public schools, police stations, public libraries, and other such buildings used for municipal purposes; (4) provide free Internet service, without charge, through one service outlet activated for basic service to any and all fire stations, public schools, police stations, public libraries, and other such buildings used for municipal purposes; (5) provide equipment and training for access users, without charge, on a schedule to be agreed upon between the municipality and the CATV company; and (6) provide a return feed from any one location in the municipality, without charge, to the CATV company's headend or other location of interconnection to the CATV system for public, educational or governmental use and which, at a minimum, provides the ability for the municipality to cablecast live or taped access programming, in real time, as may be applicable, to the CATV company's customers in the municipality. The board is to adopt rules for procedures for resolving disputes between CATV companies

themselves and between CATV companies and municipalities concerning the commitment requirements described above.

The bill amends section 30 of the act to require that, a CATV company issued a system-wide franchise under the act, that serves one or more residents within a municipality is to pay the fees as described in this paragraph, and once the CATV company receiving such system-wide franchise is capable of serving the same residents within such municipality that are currently served by a CATV company that has received a municipal consent issued under the act, both the CATV company receiving such system-wide franchise and a CATV company that has received a municipal consent for such municipality, are to annually pay: (1) to the municipality served, and for the purpose of providing local property tax relief, a sum equal to three and one half percent of gross revenues derived from all tier levels of CATV programming including pay-per-view events, seasonal or sporting events of limited duration, and other similar programming or channels provided to subscribers within the municipality; and (2) to the State Treasurer, the persons residing in the municipality who are eligible for the "Pharmaceutical Assistance to the Aged and Disabled" program established pursuant to P.L.1975, c.194 (C.30:4D-20 et seq.), a sum equal to the amount that such eligible persons pay as charges or fees to the company for providing basic cable service to such persons, provided that the yearly total of such payments from the company does not exceed one half of one percent of the gross revenues that the company derives during the calendar year from all the charges or fees paid by subscribers in the municipality to the company for providing all tier levels of CATV programming including pay-per-view events, seasonal or sporting events of limited duration, and other similar programming or channels provided to subscribers within the municipality. The State Treasurer is to establish a "CATV Universal Access Fund," for the purpose of distributing such sums to such eligible persons.

The bill amends section 51 of the act to increase penalties for violations of the act and to provide that violations of the act may be enforced by summary proceedings instituted by the board in the name of the State in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

Section 30 of the bill requires the Commissioner of Community Affairs, in consultation with the BPU, to develop and conduct a study investigating how CATV companies can overcome the technical, physical and other barriers to the provision of cable television services to residents of multiple dwellings in New Jersey. The commissioner is directed to consider the relevant experiences of those CATV companies that have received a certificate of approval, those CATV companies that have received a system-wide franchise, or any other new or existing entrants to the cable television market in this State. Within 18 months of the date of enactment of the bill, the

commissioner is to submit a written report to the Governor and Legislature setting forth the findings and recommendations of this study as well as making such recommendations for further legislative action as he may deem likely to remove those barriers.

The bill also amends the act to clarify eligibility for various discounts that may be offered to subscribers and to update and clarify certain provisions of the act.